15268

(18,208.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 355.

THE HOME LIFE INSURANCE COMPANY OF NEW YORK, PLAINTIFF IN ERROR,

vs.

A. A. FISHER, AS EXECUTOR OF THE ESTATE OF ALEXANDER SUTER MACLEAN, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

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1 A. A. FISHER, as Ex'r, etc., *vs.* HOME LIFE INSURANCE CO.

In the Circuit Court of the United States for the Northern District of Florida, Fifth Judicial Circuit.

A. A. FISHER, as Executor of the Last Will & Testament of Alexander S. McLean, Dec'd, a Citizen of the State of Florida, *vs.* THE HOME LIFE INSURANCE COMPANY, a Corporation under the Laws of and a Citizen of the State of New York.	Assumpsit: Damages, $8,000.00.

Be it remembered that on the twenty-first day of December, in — year of our Lord one thousand eight hundred and ninety-nine came one A. A. Fisher, as executor of the last will and testament of Alexander S. McLean, deceased, and filed in the clerk's office of the said court a præcipe for the issuance of *summons ad respondendum* in the above-entitled cause, which was in the words and figures following, to wit:—

In the Circuit Court of the United States for the Northern District of Florida, Fifth Judicial Circuit.

A. A. FISHER, as Executor of the Last Will & Testament of Alexander S. McLean, Dec'd, a Citizen of the State of Florida, *vs.* THE HOME LIFE INSURANCE COMPANY, a Corporation under the Laws of and a Citizen of the State of New York.	Assumpsit: Damages, $8,000.00.

The clerk of said court will please issue *summons ad respondendum* in the above-entitled case, and make the same returnable according to law.

JNO. C. AVERY &
TUNISON & LOFTIN,
Pl'ff's Att'ys.

Endorsements: A. A. Fisher, etc., *vs.* The Home Life Insurance Co. Præcipe. Filed December 21st, 1899. F. W. Marsh, clerk.

2 And afterwards and on the same day, to wit: on the 21st day of December, A. D. 1899, there issued out of the clerk's office of the said court *summons ad respondendum*, directed to the marshal of the said district which was thereupon delivered to him and by him executed and returned into the said clerk's office with his return endorsed thereon, which summons was in the words and figures following, to wit:

United States Circuit Court, Fifth Circuit, Northern District of Florida.

The President of the United States to the marshal of the northern district of Florida, Greeting:

You are hereby commanded to summon the Home Life Insurance Company, a corporation under the laws of, and a citizen of, the State of New York, if it may be found in your district, to be and appear before the circuit court of the United States, fifth circuit and northern district of Florida, at the rule day of said court, to be held at the clerk's office, in the city of Pensacola, on the first Monday of January, 1900, next, to answer unto A. A. Fisher, as executor of the last will and testament of Alexander S. McLean, deceased, a citizen of the State of Florida, in said court, on a plea of assumpsit, wherein the plaintiff claims damages to the amount of eight thousand dollars. And have you then and there this writ.

[SEAL.] Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this court at the city of Pensacola, in said district, this twenty-first day of December, A. D. 1899.

F. W. MARSH, *Clerk.*

JOHN C. AVERY AND
TUNISON & LOFTIN,
Plaintiff's Attorneys.

Endorsements: United States circuit court, northern district of Florida. A. A. Fisher, ex'r, etc., *vs.* Home Life Ins. Co. Summons. Issued December 21st, 1899. Returnable Jan. 1st, 1900. Ret. and filed Dec. 28th, 1899. Jno. C. Avery, Tunison & Loftin, plaintiff's attorneys.

3 *Marshal's Return.*

Executed the within summons on the 22nd day of December, 1899, at Pensacola, Fla., upon Thomas C. Watson, general agent of the "Home Life Insurance Co." for the State of Florida, he being the highest officer of the Co. found in the northern district of Florida (neither the president, the vice-president, the general manager, nor any of the directors could be found. they not being residents of the State of Fla.) by handing him a true copy.

T. F. McGOURIN,
U. S. Marshal,
Per H. WOLF, *Ch. O. D.*

And thereafter, to wit: on the 30th day of December, A. D. 1899, the plaintiff in the said cause came into court, by his attorneys, and filed his declaration, which was in the words and figures following, to wit:

In the Circuit Court of the United States of the Fifth Judicial Circuit for the Northern District of Florida.

A. A. Fisher, who is a citizen of the State of Florida, as executor of the last will and testament of Alexander S. Maclean, the plaintiff, by John C. Avery and Tunison & Loftin, his attorneys, sues The Home Life Insurance Company, a corporation under the laws of, and a citizen of, the State of New York, the defendant;

For that, to wit: on the 28th day of August, A. D. 1899, the defendant made its policy of insurance and delivered the same to the said Alexander S. Maclean, the testator of the plaintiff, whereby the defendant did, in consideration of the statements and agreements made in the application therein referred to, and of the payment in advance of forty-five and $\frac{20}{100}$ ($45.20) dollars, and of the promise by the said testator to pay the same amount thereafter, at the office of the defendant, in the city of New York, on or before noon of the 28th day of August, November, February and May in every year during the continuance of the contract of the said policy, or until twenty (20) years' premiums should have been duly paid, promised and agreed to pay five thousand ($5,000.00) dollars to the said testator of the plaintiff, his executors, administrators and as-
4 signs, at the office of the defendant in the city of New York, immediately upon receipt and approval of proof of death of the said testator of the plaintiff, provided said policy should be then in force:

And the plaintiff avers, that, on the 16th day of October, 1899, after the said advance payment made as aforesaid, and before any other payments became due under the terms of the said policy, and while the said policy was in force, the said testator of the plaintiff died; and, before the institution of this suit, proofs of the death of the said testator were furnished by the plaintiff, who had previously qualified and received letters testamentary as executor of the last will and testament of the said testator; and the said proofs were received by the said defendant, the said policy being then in force, and a copy thereof, together with the application, options, benefits and conditions therein referred to, is hereto annexed marked Exhibit "A," and made a part hereof:

And the plaintiff further avers, that, though the said testator kept and performed all things in the said policy contained, on his part to be kept and performed, the said defendant has not paid to the plaintiff, as executor, as aforesaid, or otherwise, the said sum of five thousand ($5,000.00) dollars, less the balance of premiums for the current year, or any part thereof, and so to do has hitherto wholly neglected and refused, though often requested so to do:

To the damage of the plaintiff as executor, as aforesaid, of eight thousand ($8,000.00) dollars, and therefore he sues.

JNO. C. AVERY AND
TUNISON & LOFTIN,
Att'ys for Pl't'ff.

Bill of Particulars.

Principal amount claimed under the policy.....	$5,000.00
Less three (3) quarterly premiums @ $45.20	135.60
	$4,864.40

Interest to be added.
Fees as provided by laws of Florida will be demanded.

5 EXHIBIT "A."

The Home Life Insurance Co.

Number 91540. Age, 34.
Amount, $5,000. Premium, $45.20.
(Int. rev., $4.00.)

By this policy of assurance, in consideration of the statements and agreements made in the application for this policy, which are hereby made a part of this contract, and of the payment in advance of forty-five dollars and twenty cents, and of the payment of the same amount to be made thereafter, at the office of the said company in the city of New York, on or before noon of the twenty-eighth day of August, November, February and May in every year, during the continuance of this contract or until twenty full years' premiums shall have been duly paid,

Does promise and agree to pay five thousand dollars to Alexander S. Maclean, his executors, administrators or assigns, at the office of the said company in the city of New York, immediately upon receipt and approval of proofs of death, of Alexander S. Maclean of Pensacola in the county of Escambia, State of Florida, provided this policy be then in force.

The options, benefits and conditions, printed or written, by the said company upon the back of this policy are a part of this contract as fully as if they were recited at length over the signatures hereto affixed.

In witness whereof, the said Home Life Insurance Company has by its president or vice-president and secretary, signed and delivered this contract at the city of New York, in the State of New York, this twenty-eighth day of August, one thousand eight hundred and ninety-nine.

GEO. E. IDE, *President.*

(S'g'd) E. W. GLANWIN, *Secretary.*

6 This policy contains no restrictions as to residence or travel.

Options, Benefits, and Conditions.

Non-forfeiture.—If, after three full annual premiums have been duly paid to the company, this policy should thereafter lapse in consequence of the non-payment of any premiums subsequently due (provided this policy is not terminated by death within 30 days of

grace allowed in the payment of premiums, and provided demand is made with the legal surrender of this policy, within six months after such lapse) the company will give the holder of this policy the option of either a cash-value or a non-participating paid-up life policy, as herein provided, as specified in the following Table- B and C of guaranteed options, provided there is no indebtedness under this policy.

II.

Loans.—The company will loan to the insured upon written application to its home office at the third or any subsequent anniversary of this policy, or within thirty days thereafter, during the dividend endowment period, under the terms of the company's loan agreement then in use, an amount not exceeding the sum shown in the following Table A of guaranteed options, including any previous loan then unpaid, provided:

(*a.*) That the policy shall be legally assigned to, and deposited with the company as collateral security;

(*b.*) That the premiums shall have been paid in full to the time when the loan is made, including the entire premium for the succeeding insurance year; and

(*c.*) That interest shall be paid semi-annually at the rate of six per centum per annum on all such loans.

Guaranteed Options under the Conditions Specified in This Policy.

At end of—	Table A. Loan value.	Table B. Cash-surrender value.	Table C. Paid-up value.
3rd year.....	$250.	$150.	$750.
4th "	375.	250.	1,000.
5th "	460.	375.	1,250.
6th "	545.	460.	1,500.
7th "	640.	545.	1,750.
8th "	730.	640.	2,000.
9th "	960.	730.	2,250.
10th "	1,070.	960.	2,500.
11th "	1,195.	1,070.	2,750.
12th "	1,325.	1,195.	3,000.
13th "	1,455.	1,325.	3,250.
14th "	1,775.	1,455.	3,500.
15th "	1,935.	1,775.	3,750.
16th "	2,100.	1,935.	4,000.
17th "	2,270.	2,100.	4,250.
18th "	2,450.	2,270.	4,500.
19th "	2,675.	2,450.	4,750.
20th "	.....	2,635.	5,000.

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III.

Dividend endowment.—Each and every dividend of profits which may be made on this policy shall be retained by the company and shall be accumulated until the expiration of twenty years from the 28th day of August, 1899, at which time only such accumulation shall become due and payable to the insured in accordance with the following options of settlement.

IV.

Benefits.—If the insured be living on the 28th day of August, nineteen hundred and nineteen, on which date the dividend endowment of this policy ends, and if the premiums have been paid in full to such date, the insured shall be entitled to one of the following benefits:

1st. To exchange this policy for its entire value, (said value consists of the guaranteed reserve twenty-six hundred and thirty-five dollars, $2,635, and in addition thereto the dividend endowment accumulation as provided herein) either

(*a.*) In cash,

(*b.*) In an annuity, payable during the lifetime of the insured,

(*c.*) In a paid-up life policy, subject to evidence of good health of the insured, satisfactory to the company, for the amount in excess of the original sum assured.

2nd. To continue this policy with a new dividend endowment period of any multiple of five years and receive the dividend endowment accumulation as provided herein, either

(*a.*) In cash,

(*b.*) In an annuity, payable during the lifetime of the assured,

(*c.*) In additional paid-up life insurance, subject to evidence of good health of the insured, satisfactory to the company.

V.

Payment of premiums.—All premiums are due and payable at the home office of the company in the city of New York, unless otherwise agreed in writing, but may be paid to agents producing receipts signed by the president, vice-president or secretary, and countersigned by such agents. If any premium be not thus paid on or before the date when due, then this policy shall become void and all payments previously made shall remain the property of the company, except as herein provided. All premiums are payable in cash unless otherwise specified in this policy, and no other form of payment will be accepted, unless agreed to in writing by the president, vice-president or secretary.

VI.

Grace.—Should default be made at any time hereafter in the payment of any premium due on this policy as herein provided, the company will waive such default and accept the payment of said premium, provided the amount thereof with interest thereon from the date of default be tendered to it within thirty days after such default.

VII.

Reinstatement.—If this policy should lapse for the non-
8 payment of any premium it may be reinstated upon written application, made within six months after such lapse, (provided a paid-up policy has not already been issued in lieu thereof) accompanied by evidence of good health satisfactory to the company, and the payment of all overdue premiums with interest thereon at the rate of six per centum per annum.

VIII.

Incontestability.—After two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are, that the premium shall be duly paid, and that the requirements of the company as to age, and military or naval service in time of war shall be observed.

IX.

Indebtedness.—Any indebtedness to the company under this policy, including any balance of the current year's premium remaining unpaid, will be deducted in any settlement of this policy or from any benefit hereunder.

X.

Assignments.—Any assignment of this policy shall be made in duplicate and both copies sent to the home office, one of them to be retained by the company. Blanks for this purpose will be furnished upon application. The company assumes no responsibility for the validity of any assignment.

XI.

Alterations.—No person except the president, vice-president or secretary, has power on behalf of the company to make or modify this contract, to extend the time for paying a premium, to bind the company by making any promise, or by accepting any representation or information not contained in the application for this policy.

Copy of Application for Insurance to the Home Life Insurance Company, 256 Broadway, New York.

1. Full name of the person whose life is to be insured. Alexander Suter Maclean.

B. Residence: Town, (give street address) Pensacola. County, Escambia. State, Fla.

C. Place of business, (give street address). Pensacola, Fla.

NOTE.—If a partner or in the employ of any firm, company or business house, give name of firm or employer.

D. Shall notices of premiums coming due be addressed to the place of business as stated? Yes.

9 2. A. Occupation. Journalist.

B. Have you any other occupation than that herein specified? No.

NOTE.—It is not a sufficient answer to state, for example, "clerk," "book-keeper," "salesman," "merchant," "machinist," "mechanic," "laborer." Specify the particular branch of business or trade, or the article dealt in, or the kind of labor performed.

3. A. Have you ever been engaged in the sale, or manufacture of intoxicating liquors? ——.

B. Are you now employed where liquor is sold or manufactured? ——.

4. Place and date of birth. Place, Aberdeenshire; county, ——; State, Scotland; year, 1866; month, Dec.; day, 23; age at nearest birthday, 34.

5. Amount of insurance, $5,000; table No. 48. *Premiums, payable [annually, $——; semi-annually, $——]† quarterly, $45.20. *On what plan? Life, ordinary; life, —— annual premium; —— year endowment, —— annual premiums. Dividend endowment period, —— years.

*NOTE.—Strike out the plan and mode of payment not desired.

6. A. Full name of the person for whose benefit the insurance is to be effected. Myself.

B. Residence. ——.

C. Relationship to the person to be insured. ——.

D. Has the beneficiary any interest in the life of the person to be insured equivalent to the amount of the insurance applied for? ——.

7. A. Has the full premium been paid in cash? A. ——.

B. Has a conditional receipt been given? If so, what is its number? B. ——.

C. Has any payment been made under this application? If so, what amount and to whom? C. ——.

8. A. Has any proposal or application to insure your life ever been made to any company or agent, upon which a policy had not been issued as applied for? If so, when and to what company? State particulars. A. No.

B. Is any negotiation for other insurance pending or contemplated? B. 10,000 in the New York Life.

10 9. A. Do you drink wine, spirits, or malt liquors? A. Yes.

B. If so, which of these, and to what extent? B. Moderately.

C. Have you ever used them freely or to excess? C. No.

D. Have you ever used opium, morphine, chloral, cocaine, or other narcotics? If so, which of them, and to what extent? D. No.

E. Have you ever had special treatment for the alcohol habit, the cocaine or morphine habit? E. No.

F. To what extent do you use tobacco? F. Smoke pipe very seldom.

[† Words enclosed in brackets erased in copy.]

I warrant on behalf of myself and of any person who shall have or claim any interest in any policy issued under this application that all of the foregoing statements and answers are true, full and complete *all of the foregoing statements and answers are true, full and complete*, whether written by my own hand or not, and are offered to the company together with those contained in the declaration to the Home Life Insurance Company's medical examiner, as a consideration for, and as the basis of the contract with said company under any policy issued under this application.

I hereby agree on behalf of myself and of any person who shall have or claim any interest in any policy issued under this application as follows:

1st. That the company shall incur no liability under this application until it has been received, approved, and a policy issued thereon, and delivered during my life and continuance in good health, and until the full premium has been duly paid to and accepted by the company or its authorized agent, except that when the premium has been paid in advance to an authorized agent of the company and a conditional receipt on the company's authorized form has been given by such agent, the liability of the company shall be as stated in such conditional receipt.

2nd. That the contract contained in such policy and in this application, is a contract made and completed in the State of New York and to be construed by the laws thereof.

3rd. That in any distribution of surplus, the principles and methods which may then be in use by the company for such distribution, and its determination of the amount apportioned to any policy which may be issued under this application shall be and are hereby ratified and accepted.

4th. That in consideration of the provisions made in this policy as to paid-up insurance, all rights and claim to any other surrender value than that so provided, whether provided by the statute of any State or not, is hereby relinquished.

5th. That in case of understatement of age, the amount payable shall be the insurance which the actual premium paid would have purchased at the true age of the insured.

6th. That no suit shall be brought against this company after two years from the time that the cause of such action shall have arisen.

7th. That for two years after the date of issue of the policy, engagement in any of the following occupations or employments, namely, blasting, mining, underground or submarine labor, the manufacture or handling in connection therewith or transportation of inflammable or explosive substances, employment requiring work on electric dynamos, or on live electric wires, service upon
11 any railroad train, or in switching or coupling cars, or on any steamboat or other vessel, without the written assent of the president, vice-president or secretary of the company will render the policy void; and self-destruction while sane or insane or death in consequence of a duel or criminal violation of law within two years after the date of issue of the policy will also render the policy void.

8th. That during the continuance of the policy I will not engage in military or naval service in time of war, unless the written permission of the president, vice-president or secretary of the company has been previously obtained. In case of death from service in war without such permission, the liability of the company shall not exceed the net reserve of the policy computed according to the combined experience table of mortality with interest at four per centum per annum.

Remarks: ——.

Dated at Pensacola this 22 day of August, 1899.

(S'g'd) ALEXANDER SUTER MACLEAN.

Signature of the person whose life is to be insured.

Endorsed upon the back of policy is the following:

Date, Aug. 28th, 1899. Kind of policy ——. Life 20 pay'ts. Dividend end't period 20 years. Age 34. Premium $45.20. Payable quarterly.

Also: Number 91540. The Home Life Insurance Co. Alex. S. Maclean. $5,000.

Endorsements. A. A. Fisher, executor *vs.* Home Life Insurance Company. Declaration. Filed December 30th, 1899. F. W. Marsh, clerk.

12 And afterwards, to wit: on the 1st day of Jan., A. D. 1900, the defendant herein, by its attorneys, Blount & Blount, filed its appearance herein, which was in the words and figures following, to wit:

In U. S. Circuit Court, State of Florida.

A. A. Fisher, as Ex'r,
vs.
Home Life Insurance Co.

The clerk—judge—of said court will please enter our appearance for defendant.

BLOUNT & BLOUNT,
Attorneys for Defendant.

Endorsed: Filed January 1st, 1900. F. W. Marsh, clerk.

And afterwards, to wit: on the 8th day of May, 1900, the plaintiff, by his attorneys, filed an amendment to his declaration herein, which was in the words and figures following, to wit:

In the United States Circuit Court, Northern District of Florida, at Pensacola.

A. A. FISHER, as Executor of the Last Will and Testament of Alexander Suter Maclean, Deceased,
vs.
THE HOME LIFE INSURANCE COMPANY.

Plaintiff amends his declaration by inserting therein, after the words "marked Exhibit 'A' and made a part hereof," the following:

And a copy of the written declaration made by plaintiff's testator to the medical examiner of the defendant at the time of the making of the said application, and said medical examiner's report is hereto annexed, marked Exhibit "B" and made a part hereof.

TUNISON & LOFTIN &
JNO. C. AVERY,
Pl'ff's Att'y.

13 *Declaration Made to the Medical Examiner of the Home Life Insurance Company.*

The applicant's declarations in answer to the following questions must be recorded by the examiner in his own handwriting:

1. A. Has any proposal or application to insure your life ever been made to any company, or agent, upon which a policy has not been issued as applied for? If so, when and to what company? Give particulars. A. No.

B. Has your life ever been insured in this company? If so, for how much, and what is amount of such insurance now in force? B. No.

C. Is your life insured elsewhere? If so, where, for how much and under what kinds of policies? C. ——.

D. Is any negotiation for other insurance pending, or contemplated? D. New York Life.

E. How much insurance are you now applying for to this company? E. $5,000.

2. Are you in perfect health, so far as you know and believe? Yes.

3. Has any physician ever given an unfavorable opinion on your life? No.

4. Has there been any marked change in your weight in recent years? If so, state particulars. No.

5. Have you ever been a pensioner? If so, state disability. No.

6. A. Have you ever had, or been subject to, frequent or severe headaches? No.

Fits or convulsions? No.
Loss of consciousness? No.
Paralysis of any sort? No.
Mental derangement? No.
Neuralgia? No.

Any nervous or muscular trouble? No.
Spinal disease? No.
Impairment of sight, or hearing? No.
Discharge from the ear? No.
Asthma? No.
Spitting or coughing of blood? No.
Chronic hoarseness? No.
Chronic cough? No.
Pleurisy or pneumonia? No.
Difficulty of breathing? No.
Fainting spells? No.
Palpitation of heart? No.
Pain in region of heart? No.
Dyspepsia? No.
Chronic diarrhœa or dysentery? No.
14 Piles, or varicose veins? Yes.
Fistula? No.
Jaundice? No.
Hepatic, or renal, colic, No.
Gravel, or calculus? No.
Painful, frequent, or difficult urination? No.
Dropsy? No.
Syphilis? No.
Cancer, or other tumor? No.
Scrofula? No.
Malaria? No.
Articular rheumatism? No.
a. How many attacks? ——.
b. Date and duration? ——.
c. What parts affected, ——.
Gout, No.
Sunstroke? No.
Yellow fever? No.

B. Have you had any serious illness, disease, or injury, not named above? If, so, give particulars.

NOTE.—Answer each question; when an affirmative answer is made, give full particulars as to date, duration, severity, frequency, etc.

Applicant had an attack of typhoid fever in 1888. Was ill about three weeks and made a prompt and complete recovery. The veins in Mr. Maclean's left leg (calf) are varicose, a condition of things which he says has existed since childhood. It has never given him the least trouble, or even discomfort of any kind. In fact otherwise the circulation is perfectly normal so far as I can determine.

7. Has any change of climate for your health ever been made, or advised? No.

8. A. Are you ruptured? No.
B. Is a truss worn? No.

9. Have you been successfully vaccinated? A. Yes.
Have you had small-pox? B. No.

10. A. What is the name and residence of your physician? A. Have none.

B. When, and for what, have his services been sought? B. Not in yrs.

11. A. What other physician have you consulted? A. Dr. W. H. Ross.

B. When, and for what? B. Typhoid fever in 1888.

12. Family record.

NOTE.—In giving the causes of death, avoid all indefinite terms, such as "exposure," "general debility," "effects of cold," "fever," "complication of diseases," etc. If the word "childbirth" be used, state how long after delivery death occurred, and whether there were any evidences of disease of the lungs. If the health of any of the living members is rated as "fair," or "poor," state the nature of the ill-health.

Living.			Dead.		
	Age.	Condition of health.	Age.	Cause of death.	How long ill.
Father			75	Do not know...	Short time.
Mother			72	" " " ...	" "
15 3 brothers	32	Good			
	36	"	40	Malarial fever..	4 or 5 weeks.
None sisters					
Father's father			Over 80	Do not know...	Do not know.
Father's mother			" 70	" " " ...	" " "
Mother's father			About 65	" " " ...	" " "
Mother's mother			60	" " " ...	" " "

Previous health of father? Good.
" " " mother? Good.
" " " brother? Good.
" " " father's father? Do not know.
" " " father's mother? " " "
" " " mother's father? " " "
" " " mother's mother? " " "

13. Has there ever been in your family, among your parents, brothers, sisters, uncles or aunts, any consumption, scrofula, cancer, epile-sy, insanity, rheumatism or gout? If so, state particulars. No.

14. A. Do you drink wine, spirits, or malt liquors, daily or habitually? A. No habit of drinking liquors.

B. If so, which of these, and to what extent daily? B. ——.

NOTE.—State the daily amount. General terms, such as temperately, "moderately," "occasionally," will not be accepted, and will necessitate correspondence.

C. Have you ever used them freely or to excess? C. No.

D. Have you ever used opium, morphine, chloral, cocaine, or other narcotic? If so, which of them, and to what extent? D. No.

E. Have you ever had special treatment for the alcohol habit, the cocaine or morphine habit? E. No.

F. To what extent do you use tobacco? F. Smoke once or twice daily, pipe.

15. A. How long have you been engaged in your present occupation? A. 7 or 8 years.

B. What other occupations have you had? B. Book-keeper.

C. Is any change in occupation contemplated? If so, state particulars? C. No.

D. Have you ever been engaged in any way in the sale or manufacture of alcoholic beverages? D. No.

E. Are you employed where liquors are sold? E. No.

16. A. Where have you resided, summer and winter, during each of the last ten years? Name States or countries. A. Florida.

B. Do you contemplate a change of residence, either temporary or permanent? If so, state particulars. B. No.

I hereby declare that the accompanying application to the Home Life Insurance Company for an insurance on my life, dated Aug. 24th, 1899, was signed by me, and that I renew my agreement therein; and I also agree to waive all provisions of law forbidding any physician or surgeon from disclosing any information acquired while attending me in a professional capacity.

A. S. MACLEAN.

Signature of the applicant.

16 *Medical Examiner's Report.*

1. A. Full name of the person examined, A. S. Maclean.

B. Residence, Pensacola, Fla.

C. Occupation, journalist.

D. Age, 34.

E. Race, white.

F. Is he married? No.

G. Is the risk affected unfavorably by anything in his occupation or residence? No.

H. How long have you known him? 8 years.

I. Are you related to him? No.

2. A. Exact weight (coat and vest off). 148 lbs.

NOTE.—If the weight approximates the maximum or minimum of the tables, weigh him and take his height; do not accept his statement.

B. Exact height (in shoes), 5 feet 10½ inches.

C. Girth of chest (under vest), full inspiration 36 in.; deep expiration, 32½ in.

D. Girth of abdomen (at waist-band of trousers), 32 inches.

E. Did you weigh and measure him? No.

F. Which parent does he resemble physically? Mother.
G. Is overweight, or underweight, a family trait? No.
H. Is there anything unfavorable in his general appearance? No.
I. Does his facial aspect indicate health and vigor? Yes.
J. Figure? State whether it is erect or stooping. Erect.
K. Does he seem to you older than the stated age? No.
L. Color of hair? Black.
M. Color of eyes? Gray.
N. Has he any physical defects or deformities? If so, from what cause? ——.
O. Has he any marks of identification? What caused them? No.

3. A. Has he the appearance of a person addicted to the use of stimulants? A. No.
B. Have you any reason to suspect that he has ever used narcotics, or that he has led other than a sober and temperate life? No.

4. Is there any skin eruption, or are there any sores or ulcers, on any part of his body? No.

5. A. Is the respiratory murmur clear and distinct over the lungs? A. Yes.
B. Do auscultation and percussion show an entire absence of any signs of past or present disease of the respiratory organs? B. Yes.

6. A. State the rate and other qualities of the pulse? If the rate is above 90, or below 60, re-examine another day. A. Seventy-eight normal.

NOTE.—The rate of pulse must be written out in words.

B. Is it irregular, or intermittent? B. No.

7. A. Are the sounds and rhythm of the heart regular and normal? A. Yes.
B. Is there any evidence of undue strength or weakness of heart action? B. No.
C. Are there any indications of disease of the heart or blood-vessels? C. No.
D. Is the apex-beat in the usual place? D. Yes.

NOTE.—Examine the heart against the naked skin and with the stethoscope.

8. Is there any evidence of derangement of functions of the stomach, or other abdominal organs? No.

17 9. A. Is there any indication of enlarged prostate, stricture, or other disease of the urinary organs? No.
B. Is it necessary for him to rise at night to urinate? No.

10. Report on examination of the urine.

NOTE *a*.—The examiner must have personal knowledge that the urine examined is authentic.
NOTE *b*.—A microscopical examination is not required, except as

called for by the rules of the company, or unless deemed advisable for the particular case.

A. Specific gravity, 1,020. Reaction, acid. Amount of albumen, none. Test used, heat. Amount of sugar, none. Test used, ——.

B. Microscopical examination.

NOTE c.—The test for sugar is to be made in every case.

C. Is the urine clear or turbid? Clear, no deposit.

D. Do you know that the urine examined was voided by the applicant? Yes.

11. If the person examined is a woman, answer the following questions. A. What is the occupation of her husband? B. What is the date of her marriage? E. Has she ever had any disease of the uterus or its appendages, any menstrual disorder, or any disease of the breast? C. How many children has she borne, and what is the date of the last confinement? D. Is she now pregnant? F. Has she passed the change of life? G. Has she ever had any miscarriage, or serious difficulty in labor?

12. Where was this examination made, at the applicant's residence, or place of business, or at the examiner's office? Examiner's office.

13. Was there present at the examination any person other than the applicant and the examiner? No.

14. Do you think it advisable to seek for any further information concerning the applicant, from his medical adviser, or from any other source? No.

15. A. Have you reviewed the answers as set down on the two sides of this sheet, to make sure that the same are correct? And that every question has some answer? Please see that all erasures and corrections are properly initialed. A. Yes.

B. Have you examined the accompanying application, and verified the statements therein recorded? Please see that the signatures to the application and the declarations are alike, and that the date of the application is inserted in the place provided for it on the other side of this sheet. B. Yes.

NOTE.—If from any feeling of delicacy you have omitted to mention any circumstances affecting the risk, such as questionable habits, peculiar family relations, pecuniary embarrassments, etc., write immediately, direct to the medical director, 256 Broadway, New York. Such letter will be held in strict confidence.

16. Is there anything in the applicant's personal or family history, habits, occupation, or residence, so far as you know or believe, tending to shorten his life, or that is detrimental to the risk? If so, state in what particular. A. Personal history? No. B. Family history? No. C. Physical condition? No. D. Mental condition? No. E. Habits, past or present? No. F. Occupation, past or present? No. G. Residence? No. H. Environment? No.

18 17. Do you unqualifiedly recommend the risk proposed, If you do not, state reasons. Yes, with the exception noted below.

Additional Remarks.

Applicant says the varicose veins referred to above *has* never been inflamed or irritated in the slightest degree, and have always remained exactly the same as far back as he can remember. Otherwise than this, the enlarged veins, his condition is exceptionally good, as you will see from the foregoing report.

I hereby certify that I have examined, in private, Mr. A. S. Maclean, at Pensacola, Fla., this 24 day of Aug., 1899; that I have carefully considered all of the statements made to me by him in connection with his accompanying application for insurance and my examination; that his answers to the questions in the declarations and the answers in medical report are in my own handwriting, and that the declarations and agreement on the other side of this sheet were signed by him in my presence.

J. Z. CRAVEY, M. D., *Examiner.*

P. O. address, Pensacola, Fla.

N. B.—If you are not an appointed examiner for the company, fill up the following form: A. From what college did you receive your medical degree? ——. B. How long have you practiced medicine? ——. D. Name other companies for which you have examined. ——. E. References: Dr. —— of ——. C. How long have you lived in your present locality? ——.

Immediately on completion of the examination you may, if you deem it desirable, mail this paper to the medical director, at the home office in New York. You must always do so, without showing the paper to any one, if the person examined so requests. The application is to be returned to the agent.

Decision of the Medical Director of the Company.

Approved Aug. 31, 1899.

F. W. CHAPIN,
Med. Director.

Endorsements: Amendment of declaration. Filed May 8, 1900. F. W. Marsh, clerk.

And afterwards, to wit; on the 28th day of January, 1901, the defendant in the above-entitled cause, by its attorneys, came into court and filed the following pleas, to wit;

In the United States Circuit Court, Northern District of Florida, at Pensacola.

A. A. FISHER, as Executor of the Estate of Alexander Suter Maclean, Deceased,
vs.
HOME LIFE INSURANCE COMPANY.

19 The defendant, withdrawing all former pleas, pleads as follows:

1. That, the defendant required of the said Alexander Suter

Maclean, that he should, prior to, and as a condition of the issuance of the policy of insurance sued upon, make and sign an application to this defendant for the issuance of the said policy: That he did make, sign and deliver to the defendant such application and offered therein the statements and answers in it contained, as a consideration for, and as a basis of, a contract with the defendant, under any policy issued upon said application. A copy of said application is annexed to the declaration: That, by the terms of the policy of insurance sued on, the said application became a part of the said contract of insurance: That, in and by said application, the said Alexander Suter Maclean warranted on behalf of himself or of any person who should have or claim any interest in any policy issued under the said application, that the statements and answers in said application were true, full and complete; that in answer to question "9*a*" in said application, to wit:

"9*a*." "Do you drink wines, spirits or malt liquors?" he answered: "Yes."

And in answer to question "9*b*" in said application, to wit:

"9*b*. If so, which of these, and to what extent?" he answered: "Moderately."

The defendant avers that the said answer was not true, full and complete, because, at the time that he made said answer, he had a habit of drinking spirits more than moderately:

2. That, in the application mentioned in the first plea containing the warranty therein mentioned, the said Alexander S. Maclean was asked questions numbered 9*a* and 9*c*, to wit:

"9*a*. Do you drink wines, spirits or malt liquors?"

"9*c*. Have you ever used them freely or to excess?"

To the question "9*a*" he answered: "Yes." And to the question "9*c*" he answered: "No."

20 The defendant avers that the said answer to the said question "9*c*" was not true, full and complete because, prior to the making of said answer, he had a habit of using spirits freely:

3. That, in the application mentioned in the first plea containing the warranty therein mentioned, the said Alexander S. Maclean was asked questions numbered "9*a*" and "9*c*," to wit:

"9*a*. Do you drink wines, spirits or malt liquors?"

"9*c*. Have you ever used them freely or to excess?"

To the question "9*a*" he answered: "Yes." And to the question "9*c*" he answered: "No."

The defendant avers that the said answer to the said question "9*c*" was not true, full and complete, because, prior to the making of the said answer, he had a habit of using spirits to excess;

4. That, the defendant required of the said Alexander S. Maclean that he should, prior to, and as a condition of, the issuance of the policy of insurance sued upon, make and sign an application to this defendant for the issuance of the said policy: That he did make, sign and deliver to the defendant such application, and offered therein the statements and answers in it contained as a consideration for and as the basis of the contract with the defendant under any policy issued under the said application. A copy of said ap-

plication is annexed to the declaration. That by the terms of the policy of insurance sued on, the said application became a part of the said contract of insurance: That in and by said application the said Alexander S. Maclean represented that the statements and answers in said application were true, full and complete: That in answer to question "9*a*" in said application, to wit;

"9*a*. Do you drink wines, spirits or malt liquors?" he answered: "Yes." And in answer to question "9*b*" in said application, to wit:

"9*b*." If so, which of these, and to what extent? he answered: "Moderately."

21 The defendant avers that the said answer was not true, full and complete, because at the time that he made said answer, he had a habit of drinking spirits more than moderately, and that the existence or non-existence of the said habit was material to the risk assumed by defendant, upon the life of the said Alexander S. Maclean:

5. That, in the application mentioned in the fourth plea containing the representation therein mentioned, the said Alexander S. Maclean was asked questions numbered "9*a*" and "9*c*," to wit;

"9*a*. Do you drink wines, spirits, or malt liquors?"

"9*c*. Have you ever used them freely or to excess?"

To the question "9*a*" he answered: "Yes." And to the question "9*c*" he answered: "No."

The defendant avers that the said answer to the said question "9*c*" was not true, full and complete, because, prior to the making of said answer, he had a habit of using spirits freely, and that the existence or non-existence of the said habit was material to the risk assumed by the defendant, upon the life of the said Alexander S. Maclean;

6. That, in the application mentioned in the fourth plea containing the representation therein mentioned the said Alexander S. Maclean was asked questions numbered "9*a*" and "9*c*," to wit:

"9*a*. Do you drink wines, spirits or malt liquors?"

"9*c*. Have you ever used them freely or to excess?"

To the question "9*a*" he answered: "Yes." And to the question "9*c*" he answered: "No."

The defendant avers that the said answer to the said question "9*c*" was not true, full and complete, because prior to the making of the said answer, he had a habit of using spirits to excess, and that the existence or non-existence of the said habit was material to the risk assumed by defendant, upon the life of the said Alexander S. Maclean:

22 7. That, in the application mentioned in the fourth plea containing the representation therein mentioned, the said Alexander S. Maclean was asked questions "9*a*" and questions "9*b*," to wit:

"9*a*. Do you drink wine, spirits or malt liquors?"

"9*b*. If so, which of these, and to what extent?"

To the question "9*a*" he answered: "Yes." And to the question "9*b*" he answered: "Moderately."

The defendant avers that the said answer was not true, full and complete, because, at the time that he made the said answer, he had a habit of drinking spirits more than moderately, and that the existence or non-existence of the said habit was material to the risk assumed by defendant upon the life of the said Alexander S. Maclean, because a knowledge of such existence or non-existence would have materially influenced the judgment of the defendant in determining whether it would or not issue the policy of insurance upon the life of the said Alexander S. Maclean:

8. That, in the application mentioned in the fourth plea containing the representation mentioned, the said Alexander S. Maclean was asked question "9*a*" and question "9*b*," to wit:

"9*a*. Do you drink wine, spirits or malt liquors?"

"9*b*. If so, which of these, and to what extent?"

To the question "9*a*" he answered: "Yes." And to the question "9*b*" he answered: "Moderately."

The defendant avers that the said answer was not true, full and complete, because, at the time that he made said answer, he had a habit of drinking spirits, more than moderately, and that the existence or non-existence of the said habit was material to the risk assumed by defendant upon the life of the said Alexander S. Maclean, because a knowledge of such existence would materially influence careful and intelligent life insurance companies in determining whether to issue or to refuse to issue a policy of insurance on the life of the said Alexander S. Maclean.

23 9. That, in the application mentioned in the fourth plea containing the representation therein mentioned, the said Alexander S. Maclean was asked question "9*a*" and question "9*b*," to wit:

"9*a*. Do you drink wine, spirits or malt liquors?"

"9*b*. If so, which of these, and to what extent?"

To the question "9*a*" he answered: "Yes." And to the question "9*b*" he answered: "Moderately."

The defendant avers that the said answer was not true, full and complete, because, at the time that he made the said answer, he had a habit of drinking spirits more than moderately, and that the existence or non-existence of the said habit was material to the risk assumed by defendant upon the life of the said Alexander S. Maclean, because the existence of such habit tended to injure the health and shorten the life of the said Alexander S. Maclean;

10. That, in the application mentioned in the fourth plea containing the representation therein mentioned, the said Alexander S. Maclean was asked question "9*a*" and question "9*b*," to wit;

"9*a*. Do you drink wine, spirits or malt liquors?"

"9*b*. If so, which of these, and to what extent?"

To the question "9*a*" he answered: "Yes." And to the question "9*b*" he answered: "Moderately."

The defendant avers that the said answer was not true, full and complete, because, at the time that he made said answer, he had a habit of drinking spirits more than moderately, and that the existence or non-existence of the said habit was material to the risk as-

sumed by defendant upon the life of the said Alexander S. Maclean, because a knowledge of such existence or non-existence would have materially influenced the judgment of the defendant in determining whether it would or not issue the policy of insurance upon the life of the said Alexander S. Maclean:

And defendant avers that at the time of making the said application the said Maclean knew that he had a habit of drinking spirits more than moderately:

24 11. That, in the application mentioned in the fourth plea containing the representation therein mentioned, the said Alexander S. Maclean was asked question "9*a*" and question "9*b*," to wit:

"9*a*. Do you drink wine, spirits, or malt liquors?"

"9*b*. If so, which of these, and to what extent?"

To the question "9*a*" he answered: "Yes." And to the question "9*b*" he answered: "Moderately."

The defendant avers that the said answer was not true, full and complete, because, at the time that he made said answer, he had a habit of drinking spirits more than moderately, and that the existence or non-existence of the said habit was material to the risk assumed by defendant upon the life of the said Alexander S. Maclean, because a knowledge of such existence would materially influence careful and intelligent life insurance companies in determining whether to issue or to refuse to issue a policy of insurance on the life of the said Alexander S. Maclean:

And defendant avers that at the time of making the said application the said Maclean knew that he had a habit of drinking spirits more than moderately:

12. That, in the application mentioned in the fourth plea containing the representation therein mentioned, the said Alexander S. Maclean was asked question "9*a*" and question "9*b*," to wit:

"9*a*. Do you drink wine, spirits, or malt liquors?"

"9*b*. If so, which of these, and to what extent?"

To the question "9*a*" he answered: "Yes." And to the question "9*b*" he answered: "Moderately."

The defendant avers that the said answer was not true, full and complete, because, at the time that he made the said answer, he had a habit of drinking spirits more than moderately, and that the existence or non-existence of the said habit was material to the risk assumed by defendant upon the life of the said Alexander S.

25 Maclean, because the existence of such habit tended to injure the health and shorten the life of the said Alexander S. Maclean:

And defendant avers that at the time of making the said application, the said Maclean knew that he had a habit of drinking spirits more than moderately.

13. That, at the time of the making of the said application, the said Alexander S. Maclean made to the medical examiner of the defendant, certain statements and answers which are contained in the written declarations made by him to the said examiner, a copy of which declaration is attached to the amended declaration.

That one of the questions in said declaration was as follows, to wit:

"14*a*. Do you drink wines, spirits or malt liquors daily or 'habitually?'"

To this question the said Alexander S. Maclean answered: "No habit of drinking liquors."

The defendant avers that said answer was not true, because the said Alexander S. Maclean did have at the time of making the same, a habit of drinking liquors, to wit: spirits; and that, the existence or non-existence of the said habit was material to the risk assumed by defendant upon the life of the said Alexander S. Maclean.

14. That, at the time of the making of the said application the said Alexander S. Maclean made to the medical examiner of the defendant, certain statements and answers which are contained in the written declarations made by him to the said examiner, a copy of which declaration is attached to the amended declaration.

That one of the questions in said declaration was as follows, to wit:

14*a*. "Do you drink wines, spirits or malt liquors daily or 'habitually?'"

26 To this question the said Alexander S. Maclean answered: "No habit of drinking liquors."

The defendant avers that said answer was not true, because the said Alexander S. Maclean did have at the time of making the same, a habit of drinking liquors, to wit: spirits; and that, the existence or non-existence of the said habit was material to the risk assumed by defendant upon the life of the said Alexander S. Maclean; because a knowledge of such existence would materially influence careful and intelligent life insurance companies in determining whether to issue or to refuse to issue a policy of insurance on the life of the said Alexander S. Maclean.

15. That, at the time of the application (a copy of which is attached to the declaration) the said Alexander S. Maclean had a habit of drinking spirits to excess; that said habit was material to the risk to be assumed by defendant, because a knowledge of the existence of such habit would have materially influenced the judgment of the defendant in determining whether it would or not issue such policy of insurance upon the life of the said Maclean; that the said Maclean knew of the existence of the said habit and believed the same to be material to the said risk, but fraudulently withheld the knowledge of such fact from the defendant.

16. That, at the time of the application (a copy of which is attached to the declaration) the said A. S. Maclean had a habit of drinking spirits to excess; that said habit was material to the risk to be assumed by defendant, because the existence of such habit would tend to injure the health and shorten the life of the said A. S. Maclean; that the said Maclean knew of the existence of the said habit and believed the same to be material to the said risk, but fraudulently withheld the knowledge of such fact from the defendant.

BLOUNT & BLOUNT,
Attorneys for Defendant.

27 J. J. Hooton, being duly sworn, says that he is the agent for the defendant, and that the foregoing pleas are true.

J. J. HOOTON.

Sworn to and subscribed before me this 26th day of January, A. D. 1901.

SAM'L C. PINNEY,
[SEAL.] *Notary Public.*

Endorsed: Filed January 28th, 1901.

And afterwards, to wit: on the first day of February, 1901, the plaintiff, by his attorneys, filed in the said court his demurrer to the substituted pleas, which was in the words and figures following, to wit:

In United States Circuit Court, Northern District of Florida, at Pensacola.

A. A. FISHER, as Executor of the Last Will and Testament of Alexander Suter McLean, Deceased,
vs.
HOME LIFE INSURANCE COMPANY.

And now comes the said plaintiff, by his attorneys, and demurs to the substituted pleas filed by defendant, to wit:

1.

Plaintiff demurs to the first of said pleas because the same is bad in substance, and assigns the following grounds of demurrer:

1. Said plea does not, when taken with the admitted allegations of the declaration, show a warranty.

2. It appears that plaintiff's testator stated his estimate of his own habits, and that defendant waived any further disclosure touching the same.

3. It appears that defendant left the matter inquired about to be answered according to plaintiff's testator's opinion, and it does not appear that said testator did not state his honest opinion.

4. It does not appear that defendant in issuing said policy relied upon the answers of said testator to said questions.

5. It appears that in issuing said policy the defendant did not rely upon the answers of said testator to said questions.

28 6. It appears that the said defendant is estopped from making the said defense, because it appears that the said testator was advised by defendant, or by its procurement, that his answers would not be taken as a basis for the issuance of the said policy; but yet that the policy was issued by defendant and premiums therefor received by it from said testator; and, hence, defendant will not be permitted to avoid its liability upon said policy upon the ground that said answers were untrue, without alleging that said testator was informed that the policy was issued on the faith of said answers.

7. Said plea is otherwise bad and insufficient in law.

2.

Plaintiff demurs to the second of said pleas upon the same grounds.

3.

Plaintiff demurs to the third of said pleas upon the same grounds.

4.

Plaintiff demurs to the fourth of said pleas upon the same grounds.

5.

Plaintiff demurs to the fifth of said pleas upon the same grounds.

6.

Plaintiff demurs to the sixth of said pleas upon the same grounds.

7.

Plaintiff demurs to the seventh of said pleas upon the same grounds.

8.

Plaintiff demurs to the eighth of said pleas upon the same grounds.

9.

Plaintiff demurs to the ninth of said pleas upon the same grounds.

10.

Plaintiff demurs to the tenth of said pleas upon the same grounds.

29 11.

Plaintiff demurs to the eleventh of said pleas upon the same grounds.

12.

Plaintiff demurs to the twelfth of said pleas upon the same grounds.

13.

Plaintiff demurs to the thirteenth of said pleas upon the same grounds.

14.

Plaintiff demurs to the fourteenth of said pleas upon the same grounds.

15.

Plaintiff demurs to the fifteenth of said pleas upon the same grounds.

TUNISON & LOFTIN &
JNO. C. AVERY,
Plaintiff's Attorneys.

I certify that in my opinion the foregoing demurrers are well founded in point of law, and make oath that the same are not interposed for the purpose of delay.

JNO. C. AVERY.

Sworn to and subscribed before me this 1st day of February, A. D. 1901.

E. R. BURGOYNE,
[SEAL.] *Notary Public.*

Endorsed: Filed February 1st, 1901. F. W. Marsh, clerk.

And afterwards, to wit: on the twenty-eighth day of February, 1901, the court made and caused to be entered of record the following order in the above-entitled cause, to wit:

In the United States Circuit Court, Northern District of Florida, at Pensacola.

30 A. A. FISHER, as Executor of the Estate of Alexander Suter Maclean, Deceased,
vs.
HOME LIFE INSURANCE COMPANY.

The demurrers of the plaintiff, filed on February 1st, 1901, to the pleas of the defendant, filed on January 28th, 1901, having been brought on for argument and considered by the court: it is now ordered and adjudged that the demurrers, numbered from one to fifteen, inclusive, be and the same are hereby sustained.

It is further ordered that the demurrer of the plaintiff filed on February 13th, 1901, to the sixteenth plea of the defendant, be and the same is hereby overruled.

Ordered and done this 28th day of February, A. D. 1901.

CHAS. SWAYNE, *Judge.*

Endorsed: Filed February 28th, 1901. F. W. Marsh, clerk.

And afterwards, to wit: on the fifth day of March, 1901, the defendant, by its attorneys, came into court and filed additional pleas in the foregoing cause, which pleas were in the words and figures following to wit:

In United States Circuit Court, Northern District of Florida, at Pensacola.

A. A. FISHER, as Executor of the Estate of Alexander S. Maclean, Deceased,
vs.
HOME LIFE INSURANCE COMPANY.

The defendant, for further pleas, says:

17. That in the application mentioned in the fourth plea containing the representation therein mentioned, the said Alexander S. Maclean was asked questions "9a" and "9c," to wit:

"9*a*. Do you drink wines, spirits or malt liquors?"

"9*c*. Have you ever used them freely or to excess?"

31 To the question "9*a*" he answered "Yes," and to the question "9*c*" he answered "No."

The defendant avers that the said answer to the said question "9*c*" was not true, full and complete, because prior to and at the time of the making of said answer, he had a habit of using spirits freely, and that the existence or non-existence of the said habit was material to the risk assumed by the defendant upon the life of the said Alexander S. Maclean; and that the defendant was induced by the said answer of the said Maclean, to issue the said policy:

18. That in the application mentioned in the fourth plea containing the representation therein mentioned, the said Alexander S. Maclean was asked questions "9*a*" and "9*c*," to wit:

"9*a*. Do you drink wines, spirits or malt liquors?"

"9*c*. Have you ever used them freely or to excess?"

To the question "9*a*" he answered "Yes," and to the question "9*c*" he answered "No."

The defendant avers that the said answer to the said question "9*c*" was not true, full and complete, because prior to and at the time of making of said answer, he had a habit of using spirits freely, and that the existence or non-existence of the said habit was material to the risk assumed by the defendant upon the life of the said Alexander S. Maclean; and that the defendant was induced by the said answer of the said Maclean, to issue the said policy; and that, at the time of making the said answer, the said Maclean knew of the existence of the said habit, and believed the same to be material to the said risk:

19. That, in the application mentioned in the fourth plea containing the representations therein mentioned, the said Alexander S. Maclean was asked questions numbered "9*a*" and "9*c*," to wit:

"9*a*. Do you drink wines, spirits or malt liquors?"

"9*c*. Have you ever used them freely or to excess?"

32 To the question "9*a*" he answered, "Yes," and to the question "9*c*" he answered "No."

The defendant avers that the said answer to the said question "9*c*" was not true, full and complete, because prior to and at the time of the making of said answer, he had a habit of using spirits freely, and that the existence or non-existence of the said habit was material to the risk assumed by the defendant upon the life of the said Alexander S. Maclean: that a knowledge of such existence or non-existence would have materially influenced the judgment of the defendant in determining whether it would or would not issue the policy of insurance upon the said life; that a knowledge of such existence would materially influence careful and intelligent life insurance companies in determining whether to issue or to refuse to issue a policy of insurance on the said life; that the existence of such habit tended to injure the health, and shorten the life of the said Alexander S. Maclean, and that the defendant was induced by the said answer of the said Maclean to issue the said policy:

26. That, in the application mentioned in the fourth plea con-

taining the representation therein mentioned, the said Alexander S. Maclean was asked questions numbered "9*a*" and "9*c*," to wit;

"9*a*. Do you drink wines, spirits or malt liquors?"

"9*c*. Have you ever used them freely or to excess?"

To the question "9*a*" he answered "Yes," and to the question "9*c*" he answered "No."

The defendant avers that the said answer to the said question "9*c*" was not true, full and complete, because prior to and at the time of the making of said answer, he had a habit of using spirits freely, and that the existence or non-existence of the said habit was material to the risk assumed by the defendant upon the life of the said Alexander S. Maclean: that a knowledge of such exist-
33 ence or non-existence would have materially influenced the judgment of the defendant in determining whether it would or would not issue the policy of insurance upon the said life: that a knowledge of such existence would materially influence careful and intelligent life insurance companies in determining whether to issue or to refuse to issue a policy of insurance on the said life: that the existence of such habit tended to injure the health, and shorten the life of the said Alexander S. Maclean: that the said Maclean knew, at the time of making the said answer, of the existence of the said habit, and believed the same to be material to the said risk, and that the defendant was induced by the said answer of the said Maclean, to issue the said policy.

BLOUNT & BLOUNT,
Attorneys for Defendant.

Thos. C. Watson, being duly sworn, says, that he is the agent of the defendant, and that the foregoing pleas are true.

THOS. C. WATSON.

Sworn to and subscribed before me this 4th day of March, A. D. 1901.

AUBREY MAURA,
[SEAL.] *Notary Public.*

Endorsed: Filed March 5th, 1901. F. W. Marsh, clerk.

And afterwards, to wit: on the thirteenth day of March, 1901, the plaintiff, by his attorneys, filed his replication to the 16th additional plea of the defendant, which was in the words and figures following, to wit;

In the Circuit Court of the United States, Northern District of Florida.

A. A. FISHER, as Executor of the Last Will and Testament of Alexander Suter Maclean, Deceased,
vs.
THE HOME LIFE INSURANCE CO.

34 The said plaintiff, by his attorneys, for further replication to the 16th additional plea, says:

6. That the said A. S. McLean was in the said application, after the question, "9*a*. Do you drink wines, spirits, or malt liquors," to which he had answered "Yes," asked the question, "9*b*. If so, which of these, and to what extent?" to which he answered "Moderately;" that thereafter the defendant required him to go before one J. Z. Cravey, the defendant's medical examiner, at Pensacola, and answer certain other questions by means of a printed form of declaration, a copy of which is attached to and made a part of the amendment of the declaration, which said declaration is entitled in words and figures following: "Declaration made to the medical examiner of the Home Life Insurance Company," under which designation the defendant stated to the applicant as follows: "The applicant's declaration in answer to the following questions must be recorded by the examiner in his own handwriting;" that in said declaration the said A. S. McLean was asked the question, "14*a*. Do you drink wine, spirits or malt liquors daily or habitually?" to which question he answered "No habit of drinking liquor." That immediately following he was asked the question, "14*b*.—If so, which of these and to what extent daily?" to which he made no answer at all, and no answer was thereto recorded by the said medical examiner, who placed after the said question a simple dash of ink, notwithstanding that immediately following the said question was printed in italics, the following: "Note—State the daily amount. General terms, such as 'temperately,' 'moderately,' 'occasionally,' will not be accepted and will necessitate correspondence." That at the foot of the said declaration, and preceding the signature of the said A. S. McLean, the defendant required him to declare, and accepted his declaration as follows: "I hereby declare that the accompanying application to the Home Life Insurance Company on my life, dated August 24, 1899, was signed by me, and that I renew my agreement therein. And I also agree

35 to waive all provisions of law forbidding any physician or surgeon from disclosing any information acquired while attending me in a professional capacity," the "application" therein referred to being the same as that whereof a copy is attached and made a part of the declaration in this case; that said A. S. McLean by reason of the premises, understood that the defendant would not issue the policy for which he applied, upon the said declaration to the defendant's medical examiner, defective as aforesaid, but that defendant would seek other information touching the matters inquired about but not answered by him as required by the defend-

ant; and the said A. S. McLean believed that the said policy was issued to him without the defendant being induced to issue the same by the defective answers aforesaid, but upon information otherwise obtained by defendant and necessitated by the fact that said McLean did not consent to answer as required by defendant; and so understanding, the said McLean accepted the said policy and paid the premiums as stated in the declaration.

TUNISON & LOFTIN &
JNO. C. AVERY.
Pl'ff's Att'ys.

In the Circuit Court of the United States, Northern District of Florida.

A. A. FISHER, as Executor of the Last Will and Testament of Alexander Suter McLean, Deceased,
vs.
THE HOME LIFE INSURANCE CO.

And, for a further replication to the 16th additional plea, the plaintiff, by his attorneys, says:

7. That, the said A. S. McLean was in the said application, after the question, "9*a*. Do you drink wines, spirits or malt liquors?" to which he had answered "Yes," asked the question, "9*b*. If so,
36 which of these, and to what extent?" to which he answered "Moderately;" that thereafter the defendant required him to go before one J. Z. Cravey, the defendant's medical examiner, at Pensacola, and answer certain other questions by means of a printed form of declaration, a copy of which is attached to and made a part of the amendment of the declaration herein, which said declaration to the medical examiner is entitled in words and figures following: "Declaration made to the medical examiner of the Home Life Insurance Company," under which designation the defendant stated to the applicant as follows: "The applicant's declaration in answer to the following questions must be recorded by the examiner in his own handwriting;" that in said declaration the said A. S. McLean was asked the question: "14*a*. Do you drink wine, spirits or malt liquors daily or habitually?" to which question he answered, "No habit of drinking liquor." That immediately following he was asked the question, "14*b*. If so, which of these and to what extent daily?" to which he made no answer at all, and no answer was thereto recorded by the said medical examiner, who placed after the said question a simple dash of ink, notwithstanding that immediately following the said question was printed in italics, the following: "Note—State the daily amount. General terms, such as 'temperately,' 'moderately,' 'occasionally,' will not be accepted and will necessitate correspondence." That at the foot of the said declaration, and preceding the signature of the said A. S. McLean, the defendant required him to declare, and accepted his declaration, as follows: "I hereby declare that the accompanying application to the Home Life Insurance Company on my life, dated August 24, 1899,

was signed by me, and that I renew my agreement therein. And I also agree to waive all provisions of law forbidding any physician or surgeon from disclosing any information acquired while attending me in a professional capacity," the "application" therein referred to being the same as that whereof a copy is attached and made a part of the declaration in this case: that said A. S. McLean by reason of the
37 premises, understood that the defendant would not issue the policy for which he applied upon the said declaration to the defendant's medical examiner, defective as aforesaid, but that defendant would seek other information touching the matters inquired about but not answered by him as required by the defendant. And the said plaintiff in fact avers that the said defendant did thereafter, and before the issuance of the said policy, prosecute an investigation or investigations at Pensacola for the purpose of ascertaining whether defendant should issue the said policy, and did, by means of such investigation or investigations obtain information upon which, in connection with the report of its medical examiner at Pensacola, aforesaid, the said policy was issued.

TUNISON & LOFTIN &
JNO. C. AVERY,
Att'ys for Pl'ff.

Endorsed: Filed March 13th, 1901. F. W. Marsh, clerk.

And afterwards. to wit: on the 29th day of March 1901, the plaintiff in the above-entitled cause, came into court, by his attorneys, and filed the following replications to the several pleas of the defendant herein, to wit:

In the Circuit Court of the United States, Northern District of Florida.

A. A. FISHER, as Executor of the Last Will and Testament of A. S. Maclean,
vs.
HOME LIFE INSURANCE COMPANY.

The plaintiff withdraws all replications heretofore filed to pleas, and for replications to the several pleas of the defendant not hitherto disposed of, plaintiff says:

As to the 16th plea:

1. That he joins issue upon the said plea;

2. That the defendant was not induced to issue the said policy upon representations made by said Maclean in the said application;

38 3. That the defendant informed the said A. S. Maclean that it would not issue the said policy upon statements made by him in his said application, or upon statements made by him in his declaration to the defendant's medical examiner, a copy of which is attached to the amendment of the declaration in this case; but that if the said policy was issued, as applied for, it would be issued

upon information acquired by the defendant of persons and sources other than the said Maclean; that therefore, the said Maclean understood, and had reason to understand, that the policy which was delivered to him and which is the same policy sued on in this case, was not based upon any statement or representation made by him either in the said application or the said declaration to the medical examiner, or otherwise, and so believing, he accepted said policy and paid premiums, as stated in the declaration;

4. That said Maclean had no knowledge of said alleged habit;

5. That said Maclean was not conscious of the existence of the said alleged habit.

As to the 17th plea:

1. That he joins issue upon the said plea;

2. That the defendant informed the said Maclean that it would not issue the said policy upon statements made by him in his said application, or upon statements made by him in his declaration to the defendant's medical examiner, a copy of which is attached to the amendment of the declaration in this case; but that if the said policy was issued, as applied for, it would be issued upon information acquired by the defendant of persons and sources other than the said Maclean; that, therefore, the said Maclean understood, and had reason to understand, that the policy which was delivered to him, and which is the same policy sued on in this case, was not based upon any statement or representation made by him
39 either in the said application or the said declaration to the medical examiner, or otherwise, and so believing, he accepted said policy and paid premiums, as stated in the declaration;

3. That the said Maclean had no habit of using spirits freely at the time of making said answer;

4. That the said Maclean had no knowledge of the existence of such alleged habit;

5. That said Maclean was not conscious of the existence of the said alleged habit.

As to the 18th plea:

1. That he joins issue upon the said plea;

2. That the defendant informed the said A. S. Maclean that it would not issue the said policy upon statements made by him in his said application, or upon statements made by him in his declaration to the defendant's medical examiner, a copy of which is attached to the amendment of the declaration in this case; but that if the said policy was issued, as applied for, it would be issued upon information acquired by the defendant of persons and sources other than the said Maclean; that, therefore, the said Maclean understood, and has reason to understand, that the policy which was delivered to him and which is the same policy sued on in this case, was not based upon any statement or representation made by him either in the said application or the said declaration to the medical examiner, or otherwise, and so believing, he accepted said policy and paid premiums, as stated in the declaration;

3. That it is not true that the said Maclean believed that he had

a habit of drinking spirits to such extent as to make the same material to the said risk;

4. That said Maclean had no habit of using spirits freely at the time of making said answer;

5. That said Maclean had no knowledge of the existence of such alleged habit;

40 6. That said Maclean was not conscious of the existence of such alleged habit.

As to the 19th plea:

1. That he joins issue upon the said plea;

2. That the defendant informed the said Maclean that it would not issue the said policy upon statements made by him in his said application, or upon statements made by him in his declaration to the defendant's medical examiner, a copy of which is attached to the amendment of the declaration in this case; but that if the said policy was issued, as applied for, it would be issued upon information acquired by the defendant of persons and sources other than the said Maclean; that, therefore, the said Maclean understood, and had reason to understand, that the policy which was delivered to him, and which is the same policy sued on in this case, was not based upon any statement or representation made by him either in the said application or the said declaration to the medical examiner, or otherwise, and so believing, he accepted said policy and paid premiums, as stated in the declaration;

3. That said Maclean had no habit of using spirits freely at the time of making said answer;

4. That said Maclean had no knowledge of the existence of such alleged habit;

5. That the said Maclean was not conscious of the existence of such alleged habit.

As to the 20th plea:

1. That he joins issue upon the said plea;

2. That the defendant informed the said Maclean that it would not issue the said policy upon statements made by him in his said application, or upon statements made by him in his declaration to the defendant's medical examiner, a copy of which is at-

41 tached to the amendment to the declaration in this case; but that if the said policy was issued, as applied for, it would be issued upon information acquired by the defendant of persons and sources other than the said Maclean; that, therefore, the said Maclean understood, and had reason to understand, that the policy which was delivered to him, and which is the same policy sued on in this case, was not based upon any statement or representation made by him either in the said application or the said declaration to the medical examiner, or otherwise, and so believing, he accepted said policy and paid premiums, as stated in the declaration;

3. That the said Maclean had no habit of using spirits freely at the time of making said answer;

4. That said Maclean had no knowledge of the existence of such alleged habit.

5. That said Maclean was not conscious of the existence of the said alleged habit.

JNO. C. AVERY,
Att'ys for Pl'ff.

Endorsed: Filed March 29th, 1901. F. W. Marsh, clerk.

And afterwards, to wit: on the fourth day of April, 1901, the following pleas were filed by the defendant herein to the plaintiff's declaration, to wit:

In United States Circuit Court, Northern District of Florida.

A. A. FISHER, as Executor of the Last Will and Testament of Alexander Suter Maclean, Deceased,
vs.
HOME LIFE INSURANCE COMPANY.

The defendant, for further pleas to the declaration, says:

21. That, in the application mentioned in the fourth plea, containing the representations therein mentioned, the said Alexander Suter Maclean was asked questions numbered "9*a*" and "9*c*," to wit:

42 "9*a*. Do you drink wines, spirits or malt liquors?"

"9*c*. Have you ever used them freely or to excess?"

To the question "9*a*" he answered "Yes," and to the question "9*c*," he answered, "No."

The defendant avers that the said answer to the said question was not true, full and complete, because, prior to, and at the time of making the said answer, he had a habit of using spirits to excess, and that the existence or non-existence of the said habit was material to the risk assumed by the defendant upon the life of the said Alexander Suter Maclean, and that the defendant was induced by the said answer of the said Maclean, to issue the said policy;

22. That, in the application mentioned in the fourth plea containing the representation therein mentioned, the said Alexander Suter Maclean was asked questions numbered "9*a*" and "9*c*," to wit;

"9*a*. Do you drink wines, spirits or malt liquors?"

"9*c*. Have you ever used them freely or to excess?"

To the question "9*a*" he answered, "Yes," and to the question "9*c*," he answered "No."

The defendant avers that the said answer to the said question "9*c*" was not true, full and complete, because prior to, and at the time of the making of said answer, he has a habit of using spirits to excess, and that the existence or non-existence of the said habit was material to the risk assumed by the defendant upon the life of the said Alexander S. Maclean; that a knowledge of such existence or non-existence would have materially influenced the judgment of the defendant in determining whether it would or would not issue a policy of insurance upon the said life; that a knowledge of such existence would materially influence careful and intelligent life in-

surance companies in determining whether to issue or to refuse to issue a policy of insurance on the said life; that the existence of such habit tended to injure the health and shorten the life of the said Alexander S. Maclean, and that the defendant was induced by the said answer of the said Maclean to issue the said policy.

BLOUNT & BLOUNT,
Attorneys for Defendant.

43 J. J. Hooten being duly sworn says that he is the agent of the defendant, and that the foregoing pleas are true.

J. J. HOOTON.

Sworn to and subscribed before me, this 4th day of April, A. D. 1901.

JAMES C. WATSON,
[SEAL.] *Notary Public.*

Endorsed: Filed April 4th, 1901. F. W. Marsh, clerk.

And thereafter, to wit: on the 16th day of April, 1901, the following replications were filed by the plaintiff herein, to the *the* pleas of the defendant numbered 21 and 22, to wit:

In the United States Circuit Court for the Northern District of Florida.

A. A. FISHER, as Executor of the Last Will and Testament of Alexander Suter Maclean,
vs.
HOME LIFE INSURANCE COMPANY.

Plaintiff, by his attorneys, for replications to the defendant's last plea numbered 21, says:

1. That he joins issue upon the said plea:

2. That the defendant informed the said A. S. Maclean that it would not issue the said policy upon statements made by him in his said application, or upon statements made by him in his declaration to the defendant's medical examiner, a copy of which is attached to the amendment of the declaration in this case; but that, if the said policy was issued as applied for, it would be issued upon information acquired by the defendant from persons and sources other than the said Maclean; that thereafter said Maclean understood and had reason to understand, that the policy which was delivered to him and which is the same policy sued on in this case, was not based upon any statement or representation made by

44 him, either in the said application, or in his said declaration to the medical examiner, or otherwise; and so believing, he accepted the said policy and paid premiums, as stated in the declaration.

3. That said Maclean had no knowledge of the said alleged habit;

4. That said Maclean was not conscious of the existence of the said alleged habit;

And for replication to defendant's last plea numbered 22, the plaintiff says:

1. That he joins issue upon the said plea:

2. That the defendant informed the said A. S. Maclean that it would not issue the said policy upon statements made by him in his said application, or upon statements made by him in his declaration to the defendant's medical examiner, a copy of which is attached to the amendment of the declaration in this case; but that, if the said policy was issued as applied for, it would be issued upon information acquired by the defendant from persons and sources other than the said Maclean; that thereafter said Maclean understood, and had reason to understand, that the policy which was delivered to him and which is the same policy sued on in this case, was not based upon any statement or representation made by him, either in the said application, or in his said declaration to the medical examiner, or otherwise; and so believing, he accepted the said policy and paid premiums, as stated in the declaration;

3. That said Maclean had no knowledge of the said alleged habit;

4. That said Maclean was not conscious of the existence of the said alleged habit.

TUNISON & LOFTIN &
JNO. C. AVERY,
Att'ys for Pl't'ff.

Endorsed: Filed April 16th, 1901. F. W. Marsh, Clerk.

And on the fourth day of April, 1901, the following demurrer was filed by the defendant in the said cause, to wit;

In Escambia County Circuit Court, State of Florida.

45 A. A. FISHER, as Executor of the Last Will and Testament of Alexander Suter Maclean, Deceased,
vs.
HOME LIFE INSURANCE CO.

The defendant demurs to the third replication to the seventeenth plea, upon the ground that the said replication does not deny that the said Maclean had a habit of using spirits freely, prior to the time of making the answer therein mentioned;

The defendant demurs to the fourth replication to the seventeenth plea, upon the ground that a want of knowledge by the said Maclean of the existence of the said habit would not prevent his false representation under the circumstances mentioned in said plea from being a bar to a recovery in this suit.

The defendant demurs to the fifth replication to the seventeenth plea, upon the ground that the alleged fact that the said Maclean was not conscious of the existence of the habit mentioned in said

plea would not prevent the false representation alleged in said plea under the circumstances therein set forth, from avoiding the said policy and preventing a recovery in this suit:

Defendant demurs to the fourth replication to the eighteenth plea, upon the ground that it does not deny that the said Maclean had a habit of using spirits freely prior to the time of making the answer therein mentioned;

Defendant demurs to the third replication to the nineteenth plea, upon the ground that the said replication does not deny that the said Maclean had a habit of using spirits freely, prior to the time of making the answer therein mentioned:

46 Defendant demurs to the fourth replication to the nineteenth plea, upon the ground that a want of knowledge by the said Maclean of the existence of the said habit would not prevent his false representation under the circumstances mentioned in said plea from being a bar to a recovery in this suit:

Defendant demurs to the fifth replication to the nineteenth plea, upon the ground that the alleged fact that the said Maclean was not conscious of the existence of the habit mentioned in said plea would not prevent the false representation alleged in said plea under the circumstances therein set forth, from avoiding the said policy and preventing a recovery in this suit:

BLOUNT & BLOUNT,
Attorneys for Defendant.

I, William A. Blount, of counsel for defendant, certify that, in my opinion, the foregoing demurrer is well founded in law, and make oath that it is not interposed for delay.

W. A. BLOUNT.

Sworn to and subscribed before me this 4th day of April, A. D. 1901.

E. H. ROSENSTEIN,
Notary Public.

[SEAL.]

Endorsed: Filed April 4th, 1901. F. W. Marsh, clerk.

And on the fifteenth day of March, 1901, the following pleas were filed by the defendant in the said cause, to wit;

In United States Circuit Court, Northern District of Florida.

A. A. FISHER, as Executor,
vs.
HOME LIFE INSURANCE COMPANY OF NEW YORK.

The defendant, for further pleas to the declaration, says:

23. That, at the time of the making of the application (a copy of which is attached to the declaration,) the said Alexander S. Maclean made the medical examiner of the defendant certain

47 statements and answers which are contained in the written declaration made by him to the said examiner, a copy of

which declaration is attached to the amended declaration of the plaintiff: that, by said written declaration, and the application, and the policy, the said statements made by the said Maclean became and were warranties: that, one of the questions, in said declaration, was as follows, to wit:

"14*a*. Do you drink wine, spirits or malt liquors daily or habitually?"

To this question the said A. S. Maclean answered: "No habit of drinking liquors."

The defendant avers that said answer was not true, because the said A. S. Maclean did have, at the time of making the same a habit of drinking liquors, to wit, spirits:

24. That, at the time of the making of the application (a copy of which is attached to the declaration), the said Alexander S. Maclean made to the medical examiner of the defendant, certain statements and answers which are contained in the written declarations made by him to the said examiner, a copy of which declaration is attached to the amended declaration of the plaintiff: that, one of the questions in said declaration was as follows, to wit:

"14*a*. Do you drink wine, spirits or malt liquors daily or habitually?"

To this question the said A. S. Maclean answered: "No habit of drinking liquors."

The defendant avers that said answer was not true, because the said A. S. Maclean did have, at the time of making the same, a habit of drinking liquors, to wit: spirits; and that the existence or non-existence of the said habit was material to the risk assumed by the defendant upon the life of the said A. S. Maclean: that, a knowledge of such existence or non-existence would have materially
48 influenced the judgment of the defendant in determining whether it would or would not issue a policy of insurance upon the said life: that a knowledge of such existence would materially influence careful and intelligent life insurance companies in determining whether to issue or to refuse to issue a policy of insurance on the said life: that the existence of such habit tended to injure the health and shorten the life of the said Alexander S. Maclean:

25. That, at the time of the making of the application (a copy of which is attached to the declaration), the said A. S. Maclean made to the medical examiner of the defendant, certain statements and answers which are contained in the written declarations made by him to the said examiner, a copy of which declaration is attached to the amended declaration of the plaintiff: that, one of the questions in said declaration was as follows, to wit:

"14*a*. Do you drink wine, spirits or malt liquors daily or habitually?"

To this question the said A. S. Maclean answered: "No habit of drinking liquors."

The defendant avers that said answer was not true, because the said A. S. Maclean did have, at the time of making the same, a habit of drinking liquors, to wit: spirits; and that the existence or non-

existence of the said habit was material to the risk assumed by the defendant upon the life of the said A. S. Maclean: that, a knowledge of such existence or non-existence would have materially influenced the judgment of the defendant in determining whether it would or would not issue a policy of insurance upon the said life: that a knowledge of such existence would materially influence careful and intelligent life insurance companies in determining whether to issue or to refuse to issue a policy of insurance on the said life: that the existence of such habit tended to injure the health and shorten the life of the said Alexander S. Maclean: and that the said
49 Maclean knew at the time of making the said answer, of the existence of the said habit, and believed the same to be material to the said risk.

BLOUNT & BLOUNT,
Att'ys for Def't.

J. J. Hooton being duly sworn says that he is the agent of the defendant company, and that the foregoing pleas are true.

J. J. HOOTON.

Sworn to and subscribed before me this 15th day of March, A. D. 1901.

[SEAL.] E. H. ROSENSTEIN,
Notary Public.

Endorsed: Filed March 15th, 1901. F. W. Marsh, clerk.

And afterwards, to wit: on the 23rd day of April, A. D. 1901, the defendant, by its attorneys, filed its demurrers to the replications of the plaintiff, which demurrers were in the words and figures following, to wit:

In the Circuit Court of the United States, Northern District of Florida.

A. A. FISHER, as Executor of Alexander Suter Maclean, Deceased, }
vs.
HOME LIFE INSURANCE CO. }

The defendant demurs to the third replication to the twenty-first plea, upon the ground that a want of knowledge by the said Maclean of the existence of the said habit would not prevent his false representation under the circumstances mentioned in said plea, from being a bar to recovery in this suit.

The defendant demurs to the fourth replication to the twenty-first plea, upon the ground that the alleged fact that the said Maclean was not conscious of the existence of the habit mentioned in said plea would not prevent the false representation alleged in
50 said plea under the circumstances therein set forth, from avoiding the said policy and preventing a recovery in this suit.

The defendant demurs to the third replication to the twenty-

second plea upon the same ground that it has demurred to the third replication to the twenty-first plea.

The defendant demurs to the fourth replication to the twenty-second plea upon the same ground that it has demurred to the fourth replication to the twenty-first plea.

BLOUNT & BLOUNT.
Attorneys for Def't.

I, William A. Blount, of counsel for defendant, certify that in my opinion the foregoing demurrers are well founded in law and make oath that they are not interposed for the purpose of delay.

W. A. BLOUNT.

Sworn to and subscribed before me this 18th day of April, A. D. 1901.

——— ———.

Endorsed: Filed April 23rd, 1901. F. W. Marsh, clerk.

And afterwards, to wit: on the 29th day of April, 1901, the plaintiff, by his attorneys, filed demurrers to the 23. 24 and 25 pleas of the defendant, which demurrers were in the words and figures following, to wit:

In the Circuit Court of the United States for the Northern District of Florida.

A. A. FISHER, as Executor, etc., }
vs.
HOME LIFE INSURANCE COMPANY. }

The plaintiff demurs to the defendant's plea numbered 23, filed March 15, 1901, because the same is bad in substance:

(*a*.) The allegations thereof taken in connection with the admitted allegations of the declaration, amendment of declaration and
51 exhibits, show that there was no warranty by said testator in regard to the matters set up as a defense in said plea.

(*b*.) The said plea shows that the failure of the defendant to require fuller answers to questions 14*a* and 14*b* of testator's declaration to the defendant's medical examiner, waived the right to question testator's estimate of his own habits.

(*c*.) The said plea shows that defendant left the matter inquired about to be answered according to testator's opinion, and it does not appear that testator did not state his honest opinion.

(*d*.) The said plea sets up no fact not appearing in the declaration, except an alleged habit, and as to that the failure of the defendant to require fuller answers to questions 14*a* and 14*b* of the testator's declaration to the defendant's medical examiner, waived the right to question testator's estimate of his own habits.

(*e*.) It appears that the defendant is estopped from making the said defense, because it appears that the said testator was advised

by the defendant, or by its procurement, that his answers would not be taken as a basis for the issuance of the said policy, but yet that the policy was issued by defendant and premiums therefor received by it from the said testator, and that hence defendant will not be permitted to avoid its liability upon said policy upon the ground that the said answers were untrue, without alleging that the said testator was informed that the policy was issued on the faith of said answers.

(*f.*) It appears that testator in his application stated to defendant that he did drink spirits moderately.

And, plaintiff demurs to defendant's plea numbered 24, filed March 15, 1901, because the same is bad in substance, and
52 assigns the same grounds of demurrer as to 23.

And, plaintiff demurs to defendant's plea numbered 25, filed March 15, 1901, because the same is bad in substance, and assigns the same grounds of demurrer as to plea numbered 23.

TUNISON & LOFTIN &
JNO. C. AVERY,
Plaintiff's Attorneys.

I certify that in my opinion the foregoing demurrers are well founded in point of law, and make oath that the same are not interposed for the purpose of delay.

JNO. C. AVERY.

Sworn to and subscribed before me this 29th day of April, A. D. 1901.

E. R. BURGOYNE,
Notary Public, State of Fla.

[SEAL.]

Endorsed: Filed April 29th, 1901. F. W. Marsh, clerk.

And afterwards, to wit, on the 29th day of April, 1901, the court made and caused to be entered of record the following order in the said cause, to wit:

A. A. FISHER, as Ex'r, etc.,
vs.
HOME LIFE INS. CO.

The demurrers to the 3rd, 4th and 5th replications to the 17th plea, to the 4th replication to the 18th plea, to the 3rd, 4th and 5th replications to the 19th plea, to the 3rd and 4th replications to the 21st plea, and to the 3rd and 4th replications to the 22nd plea, coming on to be heard and the counsel for the parties having argued the same, and the court being advised of its decision;

It is ordered that the said demurrer be and is hereby sustained.

CHAS. SWAYNE, *Judge.*

Endorsed: Filed April 29, 1901. F. W. Marsh, clerk.

And afterwards, to wit, on the 2nd day of May, 1901, the following order was made and entered of record in the above-entitled
53 cause, to wit:

In the Circuit Court of the United States for the Northern District of Florida.

A. A. FISHER, as Executor, etc.,
vs.
HOME LIFE INSURANCE COMPANY.

This cause coming on to be heard upon plaintiff's demurrers to pleas numbered 23, 24 and 25, filed March 15, 1901, and the same having been argued by counsel for the respective parties and considered by the court; it is ordered;

That, the demurrers and each of them be and they are hereby sustained, with leave to defendant to plead further, as it may be advised.

Thus done and ordered this 2nd day of May, A. D. 1901.

CHAS. SWAYNE, *Judge.*

Endorsed: Filed May 2nd, 1901. F. W. Marsh, clerk.

And afterwards, to wit: on the 6th day of May, 1901, the following plea was filed by the defendant in the above-entitled cause, to wit:

In the United States Circuit Court, Northern District of Florida, at Pensacola.

A. A. FISHER, as Ex'r,
vs.
HOME LIFE INSURANCE COMPANY OF NEW YORK.

The defendant for further plea to the declaration, says:

26. That at the time of the making of the application (a copy of which is attached to the declaration), the said Alexander S.
54 Maclean made to the medical examiner of the defendant, certain statements and answers which are contained in the written declaration made by him to the said examiner, a copy of which declaration is attached to the amended declaration of the plaintiff; that one of the questions in said declaration was as follows, to wit:

"14*a*. Do you drink wine, spirits or malt liquors daily or habitually?"

To this question the said A. S. Maclean answered; "No habit of drinking liquors."

The defendant avers that said answer was not true, because the said A. S. Maclean did have at the time of making the same a habit of drinking liquors, to wit; spirits; and that the existence or non-existence of the said habit was material to the risk assumed by the

defendant upon the life of the said A. S. Maclean, and that the defendant was induced by the said answer of the said Maclean to issue the said policy.

BLOUNT & BLOUNT,
Att'ys for Defendant.

Thos. C. Watson, being duly sworn, says that he is the agent of the defendant and that the foregoing plea is true.

THOS. C. WATSON.

Sworn to and subscribed before me this 6th day of May, A. D. 1901.

E. D. BEGGS,
[SEAL.] *Notary Public.*

Endorsed: Filed May 6, 1901. F. W. Marsh, clerk.

And afterwards, to wit: on the 6th day of May, 1901, the following replication was filed to the foregoing plea, by the plaintiff herein, to wit;

In United States Circuit Court, Northern District of Florida.

A. A. FISHER, Executor,
vs.
HOME LIFE INSURANCE CO. OF NEW YORK.

55 Plaintiff extends his replications so that they shall apply to the plea this day filed and numbered 26.

TUNISON & LOFTIN &
JNO. C. AVERY,
Pl'ff's Att'ys.

Endorsed: Filed May 6th, 1901. F. W. Marsh, clerk.

And afterwards, to wit: on the 6th day of May, 1901, the following proceedings were had in open court, to wit:

A. A. FISHER, as Executor of the Last Will and Testament of Alexander S. Maclean, Deceased,
vs.
THE HOME LIFE INSURANCE COMPANY, a Corporation under the Laws and a Citizen of the State of New York.

Law. No. 54.
Damages, $8,000.00.

This cause came on at this time to be heard upon the issues of fact contained in the pleadings, and upon the motion of the respective counsel in this cause, came the following jury, to wit: 1. J. E. McCann, 2. B. J. Gonzales, 3. Theodor Ingraham, 4. A. Miller, 5. Bryan Dunwody, 6. Charles G. Johnson, 7. T. W. Jones, 8. J. T.

Stubbs, 9. Arthur Johnson, 10. R. J. Brewton, 11. H. E. Cleveland, 12. John M. Coe, who being duly chosen, tried and sworn, whereupon defendant withdrew pleas numbered 16, 18, 19, 20 and 22 from the consideration of the jury, and after hearing a portion of the evidence, and it being the hour of adjournment, the jury, after being instructed by the court, was allowed to separate.

And afterwards, to wit: on the 8th day of May, 1901, the plaintiff herein, by his attorneys, withdrew his amendment to the declaration, which withdrawal was in writing and was as follows, to wit:

Circuit Court of United States, Northern Dist. of Florida.

56 A. A. FISHER, Executor,
vs.
HOME LIFE INS. CO.

Plaintiff withdraws the amendment of declaration filed herein.

TUNISON & LOFTIN &
JNO. C. AVERY,
Pl'ff's Att'ys.

Endorsed: Filed May 8th, 1901. F. W. Marsh, clerk.

And thereafter, to wit: on the 9th day of May, 1901, the following plea was filed in the said cause by the defendant's attorneys, to wit:

In United States Circuit Court, Northern District of Florida.

A. A. FISHER, as Executor of Alexander Suter Maclean, Deceased,
vs.
HOME LIFE INSURANCE COMPANY OF NEW YORK.

The defendant for further plea, says:

27. That it never undertook and promised in manner and form as in said declaration is alleged.

BLOUNT & BLOUNT,
Attorneys for Defendant.

J. J. Hooton, being duly sworn says that he is the agent of the defendant, and that the foregoing plea is true.

J. J. HOOTON.

Sworn to and subscribed before me this 9th day of May, 1901.

[SEAL.] E. H. ROSENSTEIN,
Notary Public.

Endorsed: Filed May 9th, 1901. F. W. Marsh, clerk.

To which plea the plaintiff, by his attorneys, then and there took issue, by statement to that effect in open court.

And thereafter, to wit: on the 9th day of May, 1901, came the said defendant, by *his* attorneys, and took issue upon the replications in the case, in the words and figures following, to wit:

57 In U. S. Circuit Court, Nor. Dist. of Fla.

A. A. FISHER, as Ex'r,
vs.
HOME LIFE INS. CO. OF N. Y.

The defendant takes issue upon all the replications of the plaintiff, to wit: the 1st and 2nd replications to the pleas 17–21 & 26.

BLOUNT & BLOUNT,
Att'ys for Def't.

5, 9, 1901.

Endorsed: Filed May 9th, 1901. F. W. Marsh, clerk.

And on the 7th day of May, 1901, the following proceedings were had in open court, to wit:

A. A. FISHER, as Executor of the Last Will and Testament of Alexander S. Maclean, Deceased,
vs.
THE HOME LIFE INSURANCE COMPANY, a Corporation under the Laws of and a Citizen of the State of New York. } Law. No. 54.

This cause came on again to be heard on the testimony in the cause, and the jury aforesaid being in the box and the parties and their attorneys being in court, the said cause proceeded on the taking of testimony of witnesses, and it being the hour of adjournment, the jury after being instructed by the court, were allowed to separate.

And afterwards, to wit; on the 8th day of May, 1901, the following proceedings were had in open court, to wit;

A. A. FISHER, as Executor of the Last Will and Testament of Alexander S. Maclean, Deceased,
vs.
THE HOME LIFE INSURANCE COMPANY, a Corporation under the Laws and a Citizen of New York.

58 This cause coming on again to be heard on the testimony of the witnesses, in the cause, and the jury aforesaid being in the box and the parties and their attorneys in court, the said cause proceeded on the taking of the testimony of witnesses, and it being the hour of adjournment, the jury being instructed by the court, were allowed to separate.

And on the following day, to wit: on the 9th day of May, A. D. 1901, the following proceedings were had in open court, to wit;

A. A. FISHER, as Executor of the Last Will and Testament of Alexander S. Maclean, Deceased,
vs.
THE HOME LIFE INSURANCE COMPANY, a Corporation under the Laws and a Citizen of New York.

This cause coming on again to be heard on the testimony of the witnesses, in the cause, and the jury aforesaid being in the box, and the parties and their attorneys in the court, the said cause proceeded on the taking of the testimony of witnesses and it being the hour of adjournment, the jury being instructed by the court, were allowed to separate.

And on the following day, to wit: on the tenth day of May, A. D. 1901, the following proceedings were had in open court, to wit:

A. A. FISHER, as Executor of the Last Will and Testament of Alexander S. Maclean, Deceased,
vs.
THE HOME LIFE INSURANCE COMPANY, a Corporation under the Laws and a Citizen of New York.
} Law. No. 54.

This cause coming on again to be heard on the testimony of the witnesses in the cause, and the jury aforesaid being in the box, and the parties and their attorneys in court, the said cause proceeded, and after the argument of counsel and the charges of the court, the said jury retired to consider of their verdict, and after due deliberation came into court and presented the following verdict:
59 "We, the jury, find for the plaintiff in the amount of principal, $4,864.40, interest from Dec. 21st, 1899, to May 10th, 1901, $539.39, attorneys' fees at 10 per cent., $500.00, $5,903.79. J. T. Stubbs, foreman."

Whereupon, it is considered, ordered and adjudged by the court, that the plaintiff, A. A. Fisher, as executor of the last will and testament of Alexander S. Maclean, deceased, do have and recover of and from the said defendant, The Home Life Insurance Company, a corporation under the laws and a citizen of the State of New York, the sum of four thousand eight hundred and sixty-four dollars and forty cents, as principal, and the further sum of five hundred and thirty-nine dollars and thirty-nine cents, as interest thereon from the twenty-first day of December, A. D. 1899, to date, and the further sum of five hundred dollars as attorneys' fees in the conduct of this cause by the plaintiff, the above amounts so adjudged totaling the sum of five thousand, nine hundred and three dollars and seventy-nine cents ($5,903.79), together with interest from date until paid, together with the costs of this cause, legally taxed at the sum of $390.40, and that the plaintiff do have execution therefor.

And afterwards, to wit: on the first day of June, A. D. 1901, came the defendant herein, and filed in the office of the clerk of said court, the bill of exceptions certified as required by law, in the words and figures following, to wit:

60 In the Circuit Court of the United States, Northern District of Florida, at Pensacola, March Term, 1901.

I, Charles Swayne, judge of the said court, do hereby certify that during the progress of the cause pending in said court wherein A. A. Fisher, as executor of the estate of Alexander Suter Maclean, deceased, was plaintiff, and The Home Life Insurance Company of New York, was defendant, the following proceedings were had, viz:

On the 6th day of May, 1901, during a term of said court, the issues joined between the said parties, came on to be tried before a jury.

First Exception.

The plaintiff called as his first witness, John Eagan, who, after being duly sworn, testified that he had been a practicing lawyer in the city of Pensacola, Florida, for about fifteen years; that he was acquainted with the usual fees charged by attorneys-at-law in said city for the conduct of cases in the courts therein, and that he had examined the papers in this case and had formed an opinion as to what would be a proper fee for the attorneys for the plaintiff in this case in this court. Thereupon, the attorneys for the plaintiff asked him the following question, to wit:

"Judging from your experience testified about, and your knowledge of this case, what would be a reasonable and proper fee for the attorneys of the plaintiff, for the conduct of this case in this court?"

But to the said question and to any answer by the witness thereto, the defendant, by its attorney, then and there objected
61 because the plaintiff was not, without the act of the legislature of the State of Florida of the year 1893, being chapter 4173 of the Laws of said State, entitled to recover attorneys' fees, and that such statute was in contravention of the fourteenth amendment to the Constitution of the United States because it deprives insurance companies, including the defendant, of their property, without due process of law, and because it deprives insurance companies, including the defendant, of the equal protection of the laws.

But the judge of said court did then and there refuse to sustain the said objection and did permit the said question to be asked, and the said witness to answer the same, to which decision and action of the said judge, the defendant did then and there except.

Thereupon, the said witness answered that in his opinion a fee of seven hundred and fifty dollars would be a reasonable fee for the plaintiff to recover for his attorneys' fees in this cause in this court.

Second Exception.

Before the beginning of the testimony at the trial, the counsel for the defendant, in the presence of the court and jury, made the following offer, to wit:

"The defendant hereby consents that judgment shall be entered against it on the trial of this cause for the sum of five thousand dollars and interest, at the rate of eight per cent. per annum from the date of the death of the testator of the plaintiff, to wit, said Alexander Suter Maclean, and the costs of this suit, unless it, the defendant, shall make good one of the pleas filed by it and now at issue.

And demanded that the defendant should be permitted to open and close the argument of the case before the jury upon the ground that by said offer, the whole burden of proof was assumed by
62 the defendant.

The said judge declared that the defendant, upon such offer, would be entitled to the opening and closing, and that the same would be accorded to it, except for the fact that the plaintiff, in spite of said offer, still had the burden of proving what would be a reasonable attorney's fee for the plaintiff to recover, and upon that ground, the said judge refused to permit the defendant to open and close the argument of said cause before the jury, to which decision and action of the said judge, the defendant did then and there except; and the plaintiff did, thereafter, open and close the argument before the jury. Afterwards, and before the argument, after defendant had closed its evidence, in support of its pleas numbered 17, 21 and 26, plaintiff withdrew his amendment to the declaration, and thereupon defendant filed a further plea, in words and figues following: "That it never undertook and promised as alleged."

Third Exception.

During the trial, and before the argument of counsel began, the defendant requested the said judge to deliver in charge to the jury the following special instruction, to wit:

"1. If you find that A. S. Maclean had ever before the application made by him to the defendant for the issuance of the policy in suit, had a habit of drinking spirits to excess, then you will find for the defendant."

But the said judge did then and there refuse to give the said instruction to the jury, to which decision and action the defendant did then and there except.

The court also instructed the jury as follows:

"If you find either one to be true—that before Maclean made application, he drank liquor either freely or to excess, or at the time that he made the application he had a habit of drinking liquor, you will find in this case for the defendant."

63 And at the request of the defendant, the court also instructed the jury as follows:

"6. The defendant, under the pleadings, is required to prove either that A. S. Maclean had, before the making of the application,

to wit, August 22, 1899, a habit of drinking spirits freely, or a habit of drinking spirits to excess, or had, at the time of his statement to the medical examiner, to wit, August 24, 1899, a habit of drinking spirits; but it is not necessary that the defendant should prove the existence of more than one of these habits."

And, at the request of the defendant:

"7. It is not necessary, in order that you may find for the defendant, that you should find that Maclean over drank spirits freely or to excess; it is only necessary, as to the extent of the drinking, that you should find that he had, at the time of his application, a habit of drinking spirits."

And, at the request of defendant:

"18. If you find that Alexander S. Maclean had ever, before the application made by him to defendant for the issuance of the policy in suit, had a habit of drinking spirits to excess, that such drinking was material to the risk, and that the defendant was induced to issue the policy by his representations that he did not have such habit, then you will find for the defendant."

There was testimony before the jury tending to show that before the application made by Alexander S. Maclean for the issuance of the policy in suit, he had a habit of drinking spirits to excess, and testimony tending to show that he did not have such habit.

Upon the trial, the deposition of George E. Ide was read, wherein, among other things, he testified that he was, in August and September, of 1899, president of the defendant company; that he was the person who finally passed upon and approved the application of the said Maclean for the issuance of the policy in suit: that, since September 1, 1899, to the date of passing upon the application of the
64 said Maclean by the said Ide, the defendant company had issued $17,047,919 of new insurance, the average policy being for $2,500.00; and that the total issue for the year 1899, including all forms of policies, annuities, revivals, &c., was 5,377: that he had, at that time before him, the application of Maclean (a copy of which is attached to the declaration), the statements of Maclean made to the medical, examiner of the defendant, and the medical examiner's report (both of which are attached to the amendment to the declaration), which amendment to the declaration was withdrawn before the case was submitted to the jury, and a report from the Holmes Mercantile Agency (a copy of which is hereinafter set forth) which was furnished to the defendant upon its application, which was received by the defendant after it had received the said application, the said declaration to the medical, examiner, and said medical examiner's report: that he had before him, no other papers, and was possessed of no other information regarding the said Maclean, or the risk to be assumed by the company: that witness would not have passed favorably upon the application if Maclean had not answered the questions in the application and statement to the medical examiner touching his habit of drinking spirits, and that if Maclean had said that he ever drank spirits to excess, he would not have passed favorably upon the application: that he had had such experience as to give him knowledge as to the practice and usage of life insurance

companies generally in accepting or rejecting applications for life insurance when the question of acceptance or rejection depends upon the habits of the applicant as to drinking spirits, and that, from that experience and knowledge he was able to say that the information that Maclean had a habit of drinking spirits would have led to an investigation as to the extent of that habit, and the information that the applicant, A. S. Maclean had a habit of drinking spirits to excess, would have led the defendant to reject the application and refuse the risk. There was no testimony tending to contradict this testimony of this witness.

65 Outside of the papers hereinbefore referred to in this exception, there was no testimony tending to show that the defendant was not induced to issue the policy by the statements of Maclean in his application, and his statements to the medical examiner, except the testimony of the members of the firm of T. C. Watson & Co., agents for Florida of the defendant company, and of Julius Menko, local soliciting agent of the defendant, that they signed the recommendation which appears opposite their names at the foot of the application; except that Thos. C. Watson of the firm of Thos. C. Watson & Co. testified that that firm were the general agents at Pensacola of the Home Life Insurance Co. of New York, and that Julius Menko was the company's soliciting agent at that place, employed by the firm: that his acquaintance with Maclean was slight, and that there was nothing known by him concerning Maclean to render it improper to recommend him as a proper person to be insured by the company: that Thos. C. Watson & Co. in approving the application of Maclean, were influenced by the recommendation given to them by Julius Menko: that there was some question with the said Maclean and with Thos. C. Watson & Co. as to whether the said Maclean was financially able to carry said insurance, as to which an investigation was made, with the result that he was accepted.

J. J. Hooton of the firm of Thos. C. Watson & Co., testified to the same effect, except that he said that he had known Maclean for about twelve years, and had met him from time to time.

Julius Menko testified substantially the same as Hooton.

Dr. J. Z. Cravey testified that Maclean came before him and was examined by him for insurance by the defendant: that he (Cravey) wrote the answers that appear as answers in the paper called the declaration to the medical examiner: that he did not undertake to use Maclean's language in answer to question 14*a*, but as to that answer, wrote his own conclusions from what Maclean said, and that Maclean afterwards read over the declaration and signed it:

66 that the omission of an answer to question 14*b*, was an omission made by him (the said Cravey) because he did not think it necessary, in view of the answer made to question 14*a*: that he was medical examiner of defendant at Pensacola, and had been for five or six years: that if Maclean had for four or five years been an excessive drinker of spirits and up to the time of his examination for insurance, the examining physician would have discovered it during the examination: that he (Cravey) did not discover in

his examination of Maclean, anything about him to indicate that the answers which were written out by him to questions propounded to Maclean, were untrue: that what he (Cravey), from his examination of Maclean, ascertained concerning Maclean and his physical condition and other things set forth in the medical examiner's report, he set forth in that report, and set forth truly: that every statement made by him (Cravey) in his report to the defendant, was true: that the effect of excessive alcoholic drinking, continued for years, upon certain organs of the human body, is generally such as that the same would be apparent in such examination as the medical examiner made of Maclean, in connection with the declaration to the medical examiner, and the medical examiner's report in evidence, and that Maclean did not have the appearance of a drinking man:

There was no testimony tending to prove the second replication of the plaintiff to pleas seventeen, twenty-one and twenty-six, except such as may be found in the papers hereinbefore referred to in this exception.

The report of the Holmes Mercantile Agency is as follows:

"Blank No. 8226; company No. 1.

Please accommodate expeditiously.

Holmes Mercantile Agency; Charles B. Holmes, proprietor.
91540.
Sep. 6, 1899.

Please hurry.

132 NASSAU STREET,
NEW YORK, *Aug.* 31*st*, 1899.

67 Information desired as below regarding Mr. Alexander Suter Maclean. Age given 34, residing at Pensacola, State Fla., county ——, street and number ——, and occupation journalist.

Companies please fill in these blank spaces fully and accurately so the person can be readily identified and located.

Medical Dep't.
Sept. 6, 1899.
Answered.
Home Life Ins. Co.

3577. Correspondent at —— kindly oblige by obtaining the following particulars as fully and expeditiously as practicable, and without publicity or interviewing the person or acquainting any one with the fact that the information is sought. If you cannot make the report please return this blank and fee without delay.

Please give as definite and full an answer to all these questions as possible.

1. Is the person older than 34 years?

2. Is the person able to carry $5,000 life insurance, $180 annual premium? I think so.

3. How long have you or your informants known the person? About seven years.

4. Has the person any other occupation than above? (Give particulars.) No.

5. Does the person's appearance indicate good health? Yes.

6. Has the person had any disease or bodily injury likely to affect the constitution (if so, what and when)? No.

7. Has any of the person's relatives had consumption, insanity or any hereditary disease that you know or can hear of? No.

8. To what extent does the person use wines, spirits, malt liquors or narcotics? (Answer fully.) Is a moderate drinker.

9. Has the person ever used wines, spirits, malt liquors or narcotics as a habit to intoxication or excess, and how long since?

68 I have never seen or heard of his being drunk.

10. Is the person of good moral character? Yes.

11. Is there anything moral, physical or financial that would make the person an undesirable subject for life insurance? No.

12. Does the person tend bar or keep a liquor saloon or disreputable resort of any kind, or — taken any treatment for the cure of liquor or morphine habit or uses morphine or opiates as a habit or is engaged or about to engage in any dangerous occupation or undertaking, or in any way is the life in peril on account of occupation, associations or surroundings? No.

13. ——.

—— ——.

(Omit signature.)

Please write on back any further information of interest."

In the lower left-hand corner of Maclean's application for insurance, a copy of which is attached to the declaration, was the written approval of Thomas C. Watson & Co. and Julius Menko, in the following words and form:

"This risk is approved and recommended by:

JULIUS MENKO, *Soliciting Agent.*
THOMAS C. WATSON & CO.,
General Agent."

And beneath that was the following:

"Officer's check.
Approved:
GEORGE E. IDE, *President.*

Aug. 31, 1899.
Hold for M/A report."

And in his deposition the said Ide testified that "M/A report" meant Mercantile Agency's report.

69 *Fourth Exception.*

During the trial, and before the argument of counsel began, the defendant requested the said judge to deliver in charge to the jury the following special instruction, to wit:

"8½. The defendant has proved that the said A. S. Maclean made the representation charged, to wit: that on August 24, 1899, he had no habit of drinking liquors, and the defendant has proved that such representation was material to the risk to be assumed by the defendant, so that you will find that such representation was material to the risk."

But the said judge did then and there refuse to deliver the said charge to the jury, to which refusal and action the defendant did then and there except.

And the court further instructed the jury at defendant's request:

"8. The pleadings admit that the said A. S. Maclean made the representations charged in the pleas, to wit, the representation that he had not, before August 22, 1899, had a habit of drinking spirits freely, or a habit of drinking spirits to excess, and the defendant has proved that such representations were material to the risk to be assumed by the defendant, so that you will find that such representations were made, and that they were material to the risk."

And the court further instructed the jury, at the request of the defendant:

"10. Any habit of drinking spirits by Maclean was material to the risk if it tended to injure his health or shorten his life."

It appeared without contradiction, that Alexander Suter Maclean signed the declaration to the medical examiner. The examiner testified that the statements contained in said declaration that Maclean had no habit of drinking liquors, was not the language of Maclean, but was the construction put by the examiner upon

70 the answers of Maclean to inquiries put to him by the examiner at the time of the examination, Maclean saying to him that he took an occasional drink.

Dr. J. Z. Cravey testified that Maclean came before him and was examined by him for insurance by the defendant; that he (Cravey) wrote the answers that appear as answers in the paper called the declaration to the medical examiner; that he did not undertake to use Maclean's language in answer to question 14*a*, but as to that answer wrote his own conclusions from what Maclean said, and that Maclean afterwards read over the declaration and signed it; that the omission of an answer to question 14*b* was an omission made by him, the said Cravey, because he did not think it necessary, in view of the answer made to question 14*a*; that he was medical examiner of defendant at Pensacola, and had been for five or six years.

Upon the trial, the deposition of George E. Ide was read. Therein the following questions were asked him, and he gave the following answers:

Question 5. "State whether in passing favorably upon the appli-

cation of the said Maclean, and determining upon the issuance of the policy, you were induced wholly or in part by his answers to the questions submitted to him in the said application and the said statement to the said medical examiner, Dr. J. Z. Cravey, touching his habits as to drinking spirits. Would you or not have passed favorably upon the application if he had not answered such questions at all, or if he had answered that he drank spirits more than moderately, or that he had ever drunk spirits freely or to excess, or that he had a habit of drinking spirits?"

Answer to question 5. "Yes, I was. I would not have passed favorably upon it if he had not answered such questions at
71 all. If he had said that he ever drank spirits freely, more than moderately, or to excess, I would not have passed favorably upon the application. If he had said that he had a habit of drinking spirits, I would have had to be posted definitely as to the extent of the habit, before determining upon the application."

Question 7. "Have you or not had such experience as to give you knowledge as to the practice and usage among life insurance companies generally, in accepting or rejecting applications for life insurance, when the question of acceptance or rejection depends upon the habits of the applicant as to drinking spirits? If so, are you able to say, from such knowledge, that information that the applicant, A. S. Maclean, drank spirits more than moderately would have led the defendant to reject the application and refuse the risk? If so, state: Or that information that he drank spirits freely would have led to such rejection? If so, state: Or that information that he drank spirits to excess would have led to such rejection? If so, state: Or that information that he had a habit of drinking spirits would have led to such rejection? If so, state:"

Answer to question 7. "I have had such experience as to give me the knowledge referred to, and I am able to say from such knowledge, that the information that the applicant, A. S. Mclean, drank spirits more than moderately, would have led the defendant to reject the application and refuse the risk. I further say that information that he drank spirits freely, would have led to such rejection; information that he drank spirits to excess would have led to such rejection; information that he had a habit of drinking spirits, would have led, as I intimated before, to an investigation as to the extent of that habit."

There was no other testimony touching the materiality of
72 such representation, except the testimony of one Dr. Chapin, the medical director of the defendant, who testified substantially as did the witness, Ide. And except the application of assured and written approval thereof, as hereinbefore set forth, and the testimony of Drs. Anderson, Renshaw and Cravey, that the effect of habitual, excessive alcoholic drinking continued for years, would probably be such as to be discoverable upon examination of a party for life insurance, conducted as the examination of Maclean was conducted by Cravey as medical examiner for defendant, and by Renshaw as medical examiner for another company who subjected Maclean to a similar examination for that company; and

Drs. Renshaw and Cravey testified that Maclean did not appear to either of them to be a man who drank habitually, freely or to excess.

Fifth Exception.

During the trial, and before the argument of counsel began, the defendant requested the said judge to deliver in charge to the jury the following special instruction, to wit:

"9. Any habit of drinking spirits by Maclean was material, if it was to such an extent that according to the course of practice of life insurance companies generally, it would have led to the rejection of the risk if it had been made known to defendant before the issuance of the policy."

But the said judge did then and there refuse to deliver the same in charge to the jury, to which refusal and action the defendant did then and there except.

And the court, at the request of the defendant, instructed the jury as follows:

"8. The pleadings admit that the said A. S. Maclean made the representations charged in the pleas, to wit, the representation that he had not, before August 22, 1899, had a habit of drinking spirits freely, or a habit of drinking spirits to excess, and the defendant has proved that such representations were material to the risk to be assumed by the defendant, so that you will find that such representations were made, and that they were material to the risk."

73

And the court, at the request of the defendant, instructed the jury as follows:

"10. Any habit of drinking spirits by Maclean was material to the risk if it tended to injure his health or shorten his life."

The deposition of the witness, George E. Ide, in which he testified in answer to questions 5 and 7 as set forth in the fourth exception, had been offered by the defendant, and read in evidence to the jury; in which deposition the said George E. Ide had also testified that between the 1st of September, 1899, and the date of the examination of the said George E. Ide as a witness, to wit, the 24th of April, 1901, the defendant company had issued $17,047,919, of new insurance, the average policy being for $2,500.00, and that the total issue for the year 1899 including all forms of policies, annuities, revivals, &c., was 5,377 policies.

Sixth Exception.

During the trial and before the argument of the counsel began the defendant requested the said judge to deliver in charge to the jury the following special instruction, to wit:

"11. You will find from the evidence that the defendant was induced by the representations of A. S. Maclean that he had never used spirits freely or to excess, and that he did not have a habit of drinking liquors, to issue the policy sued upon."

But the said judge did then and there refuse to deliver the said

charge to the jury, to which refusal and action the defendant then and there excepted.

And the court, at the request of the defendant, instructed the jury as follows:

74 "12. In order that the defendant may succeed in its defense, it must appear that it was induced to issue the policy sued on, by the representation of Maclean that he did not have a habit of drinking spirits, or of drinking spirits freely or to excess. Such inducement, however, appears from the fact that he was required, as a condition to the issuance of the policy, to answer questions touching the existence of such habits; that he did answer such questions by saying that he did not have such habits, and that such answers were made a part of the contract of insurance contained in the policy, and it is not necessary for the defendant to otherwise show that it was induced by such representations:"

And the court, at the request of the defendant, instructed the jury as follows:

"13. In order that the plaintiff shall show that the defendant was not induced to issue the said policy by the statements made in the application and to the medical examiner by the said Maclean that he had never used spirits freely or to excess, or that he had at the time of the application, no habit of drinking liquor, he must show by testimony outside of the policy, application, statement to the medical examiner, and medical examiner's report, that the defendant was not so induced. These papers, singly, or all together, do not show that the defendant was not so induced:"

And the court, at the request of the defendant, instructed the jury as follows:

"14. In making proof that the defendant was not induced by Maclean's representations, it will not suffice for the plaintiff to show that the defendant resorted to other sources in order to obtain information as to the desirability of the said Maclean as a risk to be insured, unless it affirmatively appears that the defendant relied solely upon the information obtained from such other sources,

75 and did not rely in the smallest degree upon the statements of the said Maclean. If it was induced, in the slightest, by such representations of Maclean to issue the policy, then it is immaterial that other considerations or inducements may have concurred with such representations:"

And the court, at the request of the defendant, instructed the jury as follows:

"15. The burden lies upon the plaintiff to prove that such representations of Maclean did not, in anywise, influence the defendant to issue the policy:"

And the court, at the request of the defendant, instructed the jury as follows:

"18. If you find that Alexander S. Maclean had ever before the application made by him to defendant for the issuance of the policy in suit, had a habit of drinking spirits to excess, that such drinking was material to the risk, and that the defendant was induced to

issue the policy by his representations that he did not have such habit, then you will find for the defendant:"

And the court, at the request of the defendant, instructed the jury as follows:

"19. If you find that A. S. Maclean had ever before the application made by him to defendant for the issuance of the policy in suit, had a habit of drinking spirits freely, that such drinking was material to the risk, and that the defendant was induced to issue the policy by his representation that he did not have such habit, then you will find for the defendant:"

And the court, at the request of the defendant, instructed the jury as follows:

"20. If you find that Maclean had, on August 24th, 1899,—two months before his death,—a habit of drinking spirits, that such habit was material to the risk to be assumed by the defendant, that
76 the defendant was induced to issue the policy by his representation that he did not have such habit, then you will find for the defendant:"

In addition to the questions 5 and 7 propounded to and answered by the witness George E. Ide, as set forth in the fourth exception, the following question was asked, and answered by the said witness, as hereinafter set forth, by deposition, which was read in evidence to the jury, to wit:

Question 6. "If you say that you had at the time of passing upon the application of the said Maclean, any information from any other source, state whether or not you relied upon such other information to the exclusion of reliance on the statements of the said Maclean contained in his application, and in his declaration to the medical examiner, Dr. J. Z. Cravey, or whether you would have favorably passed upon the application from him, the said Maclean, for such issuance, in reliance only upon any other statement or information in your possession, outside of and beyond the written application and statement to the medical examiner, Dr. J. Z. Cravey?"

He answered to the sixth interrogatory as follows:

"I would not have relied upon such other information to the exclusion of a reliance upon the statements of the said Maclean as contained in his application and in his statement to the medical examiner and I would not have favorably passed upon the application of Maclean for such issuance in reliance only upon statements from information derived from outside sources and beyond the written application or statement of the medical examiner."

There was no evidence upon the trial as to whether the defendant was, or not, induced by the representations of Maclean contained in the application and in the statements of the medical examiner, other than that above set forth and that set forth in the
77 third and fourth exceptions hereinabove written.

And the application of the assured, with the written endorsements thereon, and the declaration of assured to the defendant's medical examiner, and the medical examiner's report, and the testimony of Dr. J. Z. Cravey, the defendant's medical examiner, as hereinbefore set forth, and the testimony of T. C. Watson, J. J.

Hooton, and Julius Menko, as hereinbefore set forth in connection with other exceptions.

Seventh Exception.

During the trial of said cause, and before the argument of counsel began, the defendant requested the said judge to deliver in charge to the jury the following special instruction, to wit:

"16. The plaintiff has not proved his replication, to wit, that the defendant informed Maclean that it would not issue the policy upon statements made by him in his application, or upon statements made by him in his declaration to the defendant's medical examiner, and informed him that if the said policy was issued as applied for, it would be issued upon information acquired by the defendant of persons and sources other than the said Maclean, and that the said Maclean understood and had reason to understand that the policy which was delivered to him was not based upon any statement or representation made by him either in the application or the declaration to the medical examiner, or otherwise, and that so believing, Maclean accepted the policy and paid premiums thereon, and you will therefore find that the plaintiff has not proved the said facts:"

But the said judge did then and there refuse to deliver the said charge to the jury, to which refusal and action, the defendant then and there excepted.

And the court, at the request of the defendant, gave to the jury the following instruction:

78 "17. If you find that the defendant, before it issued the policy sued on, notified the said Maclean that the policy would not be issued on the basis of a disclosure made by him in reference to the extent of his habitual indulgence in the use of spirituous liquors, then you must find for the plaintiff. The plaintiff, however, must prove such notification, and he must prove it by evidence outside of anything contained in the policy, application, statement to the medical examiner, and the medical examiner's report. There is nothing in these papers, singly, or taken together, which shows, or tends to show, any such notification:"

There was no testimony tending to prove the replication set forth in the foregoing instruction, unless it be found in the policy, application, statement of the medical examiner, report of the medical examiner, or report of the Holmes mercantile agency, or in the testimony of Dr. J. Z. Cravey, the medical examiner, as hereinbefore set forth in connection with other exceptions; or in the testimony of Watson, Hooton and Menko, as hereinbefore set forth in connection with other exceptions; or in the fact of the approval of the said application by said T. C. Watson & Co., and said Menko, as hereinbefore shown.

Eighth Exception.

During the trial, and before the argument of counsel began, the defendant requested the said judge to deliver in charge to the jury the following special instruction, to wit:

"22. If you find that A. S. Maclean signed the declaration made to the medical examiner, which has been introduced in evidence, then you will find for the defendant:"

But the said judge did then and there refuse to deliver the said charge to the jury, to which refusal and action the defendant then and there excepted.

79 *Ninth Exception.*

During the trial, the plaintiff requested the judge to deliver in charge the following special instruction, to wit:

"1. In this case there are certain documents which the court will construe for you. You have before you a policy of insurance issued by the defendant to Maclean, insuring him in accordance with its terms, and connected therewith, you have an application in which certain questions were put to Maclean, and certain answers were made thereto by him. You have also before you a declaration made about the same time by Maclean to Dr. J. Z. Cravey, the medical examiner of the Home Life Insurance Company. It appears upon the declaration so made, which was prepared for the assured by the insurance company, that it and the application made to the insurance company for insurance on the life of Maclean were to be taken and construed together. The court instructs you in reference to those documents that there was no warranty made by Maclean to the insurance company in respect to whether Maclean drank wine, spirits or malt liquors, or to what extent he drank them."

The said judge then and there delivered and read the same to the jury, to the giving of which charge and the reading of same to the jury, the defendant did then and there except.

And the court, at the request of the defendant, instructed the jury as follows:

"8. The pleadings admit that the said A. S. Maclean made the representations charged in the pleas, to wit, the representation that he had not, before August 22, 1899, had a habit of drinking spirits freely, or a habit of drinking spirits to excess, and the defendant has proved that such representations were material to the risk to be assumed by the defendant, so that you will find that such representations were made, and that they were material to the risk."

80 And the court, at the request of the defendant, instructed the jury as follows:

"12. In order that the defendant may succeed in its defense, it must appear that it was induced to issue the policy sued on, by the representation of Maclean that he did not have a habit of drinking spirits, or of drinking spirits freely or to excess. Such inducement, however, appears from the fact that he was required, as a condition to the issuance of the policy, to answer questions touching the existence of such habits; that he did answer such questions by saying that he did not have such habits, and that such answers were made a part of the contract of insurance contained in the policy, and it is not necessary for the defendant to otherwise show that it was induced by such representations:"

Tenth Exception.

During the trial, the plaintiff requested the said judge to deliver in charge to the jury the following special instruction:

"11. The court instructs you that in cases where the question of temperance or intemperance is involved, there is no sharp line of distinction, and in reference to that, much is left to the discretion and judgment of the jury; and in connection therewith, the jury is authorized to consider the reasonable understanding and the belief of the assured:"

The said judge then and there delivered and read the same to the jury, to the giving of which charge, and the reading of same to the jury, the defendant did then and there except.

81 *Eleventh Exception.*

During the trial, the plaintiff requested the said judge to deliver in charge to the jury the following special instruction, to wit:

"13. If upon the face of an application for insurance, or upon the face of a declaration intended by the parties to be used in connection with such application, a question appears to be not answered at all, or to be imperfectly answered, and the insurers issue the policy without further inquiry, they waive the want of imperfection of the answer, and render the omission to answer more fully immaterial:"

The said judge then and there delivered and read the same to the jury, to the giving of which charge, and the reading of same to the jury, the defendant did then and there except.

Twelfth Exception.

During the trial, the plaintiff requested the said judge to deliver in charge the following special instruction, to wit:

"14. An insurance company cannot claim that a policy is void because the insured suppressed facts by failing to make any answer to questions in his application or declaration made in connection with his application, when the same was received by the insured without any objection:"

The said judge then and there delivered and read the same to the jury, to the giving of which charge, and the reading of same to the jury, the defendant did then and there except.

Thirteenth Exception.

During the trial, the plaintiff requested the said judge to deliver in charge the following special instruction, to wit:

82 "15. A waiver of the right to any information upon matters inquired of in one of the interrogatories to an applicant for insurance may be inferred upon the issuance of a policy upon an application in which this interrogatory is unanswered, although

the applicant had answered in the negative another interrogatory upon the same general subject:"

The said judge then and there delivered and read the same to the jury, to the giving of which charge, and the reading of same to the jury, the defendant did then and there except.

Fourteenth Exception.

During the trial, the plaintiff requested the said judge to deliver in charge to the jury the following special instruction, to wit:

"18. The law is, and the court so instructs you, that when an insurance company issues a policy without requiring an answer to an interrogatory contained in the application or declaration made in connection therewith, it is fair, and you have a right to infer that the company waived information upon that point:"

The said judge then and there delivered and read the same to the jury, to the giving of which charge, and the reading of same to the jury, the defendant then and there excepted.

Fifteenth Exception.

During the trial, the plaintiff requested the said judge to deliver in charge the following special instruction, to wit:

"28. If you find that the habits of Alexander S. Maclean the assured, in the usual, ordinary and every-day routine of his life, were temperate, then the representations made by him in his application and to the medical examiner were not untrue within the meaning of the conditions upon which the policy sued upon was issued:"

83 The said judge then and there delivered and read the same to the jury, to the giving of which charge, and the reading of same to the jury, the defendant then and there excepted.

Outside of the pleadings and the admissions made therein, the testimony applicable to this exception is to be found in the answers of George E. Ide to the fifth and seventh interrogatories, which together with the answers thereto, are set forth in full in the fourth exception.

There was testimony tending to prove that Maclean was, in the usual, ordinary and every-day routine of his life, temperate in his habits, and there was testimony tending to prove the contrary.

The said cause having been submitted to the jury by the court, under its charges, the jury rendered a verdict for the plaintiff against the defendant on the tenth day of May, A. D., nineteen hundred and one, for the sum of five thousand nine hundred and three & $\frac{79}{100}$ dollars ($5,903.79).

And, inasmuch as the said several matters objected to, or insisted upon, and considered by the court, do not appear by the record, said defendant did on the first day of June, A. D. 1901, after the expiration of said term, by virtue of a special order herein made, propose this, its bill of exceptions, to the said rulings of said judge, and

requested him to sign the same, which, after due notice to the attorneys of the plaintiff, is done this first day of June, A. D. 1901.

CHAS. SWAYNE,

Judge of the Circuit Court of the Fifth Judicial Circuit of the United States in and for the Northern District of Florida, at Pensacola Sitting.

Endorsed: Filed June 1st 1901 F. W. Marsh, clerk.

84 And afterwards, on the same day, to wit, on the first day of June A. D. 1901, came the said defendant, by its attorney, and filed in the office of the said clerk its assignment of errors in the words and figures following, to wit:—

In United States Circuit Court, Northern District of Florida.

A. A. FISHER, as Executor of the Estate of Alexander Suter Maclean, Deceased,
vs.
HOME LIFE INSURANCE COMPANY OF NEW YORK.

Now comes the Home Life Insurance Company, of New York, by its attorneys, and says that in the record, proceedings and judgment in the above-entitled matter, there is manifest error, in this, to wit:

First Assignment of Error.

That, the court erred in sustaining the demurrer to plea numbered one, filed January 28, 1901:

Second Assignment of Error.

That, the court erred in sustaining the demurrer to the plea numbered three, filed January 28, 1901:

Third Assignment of Error.

That, the court erred in sustaining the demurrer to the plea numbered twenty-three, filed March 15, 1901:

Fourth Assignment of Error.

That, the court erred in sustaining the demurrer to the plea numbered four, filed January 28, 1901:

85 *Fifth Assignment of Error.*

That, the court erred in sustaining the demurrer to the plea numbered six, filed January 28, 1901:

Sixth Assignment of Errors.

That, the court erred in sustaining the demurrer to the plea numbered seven, filed January 28, 1901:

Seventh Assignment of Errors.

That, the court erred in sustaining the demurrer to the plea numbered eight, filed January 28, 1901:

Eighth Assignment of Error.

That, the court erred in sustaining the demurrer to the plea numbered nine, filed January 28, 1901:

Ninth Assignment of Error.

That, the court erred in permitting the witness, John Eagan, to testify as to what would be a reasonable fee for the plaintiff to recover as his attorneys' fees in this cause as a basis for such recovery against the defendant, as set forth in the first exception of the bill of exceptions:

Tenth Assignment of Error.

That, the court erred in refusing to permit the defendant to open and close the argument of the case before the jury upon the consent proffered by the defendant to permit judgment to be entered against it on the trial of the cause, for the sum of five thousand dollars and interest at the rate of eight per cent. per annum from the
86 date of the death of the said Alexander Suter Maclean, and the costs of the suit, unless it, the defendant, should make good one of the pleas filed by it and now at issue, as set forth in the second exception of the bill of exceptions:

Eleventh Assignment of Error.

That, the court erred in refusing to deliver in charge to the jury, the special instruction asked by the defendant numbered one, as set forth in the third exception of the bill of exceptions, to wit:

"1. If you find that A. S. Maclean had ever before the application made by him to the defendant for the issuance of the policy in suit, had a habit of drinking spirits to excess, then you will find for the defendant."

Twelfth Assignment of Error.

That, the court erred in refusing to deliver in charge to the jury the special instruction asked by the defendant, numbered eight and one-half, as set forth in the fourth exception of the bill of exceptions, to wit:

"8½. The defendant has proved that the said A. S. Maclean made the representation charged, to wit: that on August 24, 1899, he had no habit of drinking liquors, and the defendant has proved that such representation was material to the risk to be assumed by the defendant, so that you will find that such representation was material to the risk."

Thirteenth Assignment of Error.

That, the court erred in refusing to deliver in charge to the jury the special instruction asked by the defendant, numbered nine, as set forth in the fifth exception of the bill of exceptions, to wit:

87 "9. Any habit of drinking spirits by Maclean was material, if it was to such an extent that according to the course of practice of life insurance companies generally, it would have led to the rejection of the risk if it had been made known to defendant before the issuance of the policy."

Fourteenth Assignment of Error.

That, the court erred in refusing to deliver in charge to the jury, the special instruction asked by the defendant, numbered eleven, as set forth in the sixth exception of the bill of exceptions, to wit:

"11. You will find from the evidence that the defendant was induced by the representations of A. S. Maclean that he had never used spirits freely or to excess, and that he did not have a habit of drinking liquors, to issue the policy sued upon."

Fifteenth Assignment of Error.

That, the court erred in refusing to deliver in charge to the jury, the special instruction asked by the defendant, numbered sixteen, as set forth in the seventh exception of the bill of exceptions, to wit:

"16. The plaintiff has not proved his replication, to wit, that the defendant informed Maclean that it would not issue the policy upon statements made by him in his application, or upon statements made by him in his declaration to the defendant's medical examiner, and informed him that if the said policy was issued as applied for, it would be issued upon information acquired by the defendant of persons and sources other than the said Maclean, and that the said Maclean understood and had reason to understand that the policy which was delivered to him was not based upon any statement or representation made by him either in the application or the declaration to the medical examiner, or otherwise, and that so believing, Maclean accepted the policy and paid premiums thereon, and you will therefore find that the plaintiff has not proved the said facts."

88 *Sixteenth Assignment of Error.*

That, the court erred in refusing to deliver in charge to the jury, the special instruction asked by the defendant, numbered twenty-two as set forth in the eighth exception of the bill of exceptions, to wit:

"22. If you find that A. S. Maclean signed the declaration made to the medical examiner, which has been introduced in evidence, then you will find for the defendant."

Seventeenth Assignment of Error.

That, the court erred in delivering in charge to the jury the following special instruction requested by the plaintiff, numbered one, as set forth in the ninth exception of the bill of exceptions, to wit:

"1. In this case there are certain documents which the court will construe for you. You have before you a policy of insurance issued by the defendant to Maclean, insuring him in accordance with its terms, and connected therewith, you have an application in which certain questions were put to Maclean and certain answers were made thereto by him. You have also before you a declaration made about the same time by Maclean to Dr. J. Z. Cravey, the medical examiner of the Home Life Insurance Company. It appears upon the declaration so made, which was prepared for the assured by the insurance company, that it and the application made to the insurance company for insurance on the life of Maclean were to be taken and construed together. The court instructs you in reference to these documents that there was no warranty made by Maclean to the insurance company in respect to whether Maclean drank wine, spirits or malt liquors, or to what extent he drank them."

89 *Eighteenth Assignment of Error.*

That, the court erred in delivering in charge to the jury the following special instruction requested by the plaintiff, numbered eleven, as set forth in the tenth exception of the bill of exceptions, to wit:

11. "The court instructs you that in cases where the question of temperance or intemperance is involved, there is no sharp line of distinction, and in reference to that much is left to the discretion and judgment of the jury; and in connection therewith, the jury is authorized to consider the reasonable understanding and the belief of the assured:"

Nineteenth Assignment of Error.

That, the court erred in delivering in charge to the jury the following special instruction requested by the plaintiff, numbered thirteen, as set forth in the eleventh exception of the bill of exceptions, to wit:

"13. If upon the face of an application for insurance, or upon the face of a declaration intended by the parties to be used in connection with such application, a question appears to be not answered at all, or to be imperfectly answered, and the insurers issue the policy without further inquiry, they waive the want or imperfection of the answer, and render the omission to answer more fully immaterial:"

Twentieth Assignment of Error.

That, the court erred in delivering in charge to the jury the following special instruction requested by the plaintiff, numbered fourteen, as set forth in the twelfth exception of the bill of exceptions, to wit:

90 "14. An insurance company cannot claim that a policy is void because the insured suppressed facts by failing to make any answer to questions in his application or declaration made in connection with his application, when the same was received by the insured without any objection:"

Twenty-first Assignment of Errors.

That, the court erred in delivering in charge to the jury the following special instruction requested by the plaintiff, numbered fifteen, as set forth in the thirteenth exception, of the bill of exceptions, to wit:

"15. A waiver of the right to any information upon matters inquired of in one of the interrogatories to an applicant for insurance may be inferred upon the issuance of a policy upon an application in which this interrogatory is unanswered, although the applicant had answered in the negative another interrogatory upon the same general subject:"

Twenty-second Assignment of Error.

That, the court erred in delivering in charge to the jury the following special instruction requested by the plaintiff, numbered eighteen, as set forth in the fourteenth exception of the bill of exceptions, to wit:

"18. The law is, and the court so instructs you, that when an insurance company issues a policy without requiring an answer to an interrogatory contained in the application or declaration made in connection therewith, it is fair, and you have a right to infer that the company waived information upon that point:"

91 *Twenty-third Assignment of Error.*

That, the court erred in delivering in charge to the jury the following special instruction requested by the plaintiff, numbered twenty-eight, as set forth in the fifteenth exception of the bill of exceptions, to wit:

"28. If you find that the habits of Alexander S. Maclean, the assured, in the usual, ordinary and every-day routine of his life, were temperate, then the representations made by him in his application and to the medical examiner, were not untrue within the meaning of the conditions upon which the policy sued upon was issued:"

Wherefore, the said defendant, The Home Life Insurance Company of New York, prays that the said judgment be reversed.

W. A. BLOUNT AND
A. C. BLOUNT,
Attorneys for Home Life Insurance Company of New York.

Endorsed: Filed June 1st 1901 F. W. Marsh clerk.

92 And thereupon, and on the same day, to wit, on the first day of June, A. D. 1901, the said defendant came and filed in the office of the clerk of said court a supersedeas bond in the matter of said appeal, which is in the words and figures following, to wit:

Know all men by these presents that we, The Home Life Insurance Company of New York, a corporation of the State of New York, principal obligor, and —— —— sureties, are held and firmly bound unto A. A. Fisher as executor of the estate of Alexander Suter Maclean, deceased, obligee, in the sum of ten thousand dollars ($10,000.00) for the payment whereof, well and truly to be made we bind ourselves jointly and severally firmly by these presents.

Signed and sealed this first day of June, A. D. 1901.

The condition of this obligation is such, that whereas on May 10th, 1901, the obligee recovered in the circuit court of the United States for the northern district of Florida, at Pensacola, a judgment against the principal obligor, for the sum of five thousand, nine hundred and three & $\frac{79}{100}$ dollars ($5,903.79), to review which the principal obligor is prosecuting a writ of error to the Supreme Court of the United States:

Now therefore, if the said principal obligor shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make good its plea, then this obligation to be null and void, else to remain in full force and virtue.

HOME LIFE INSURANCE COMPANY
OF NEW YORK,
By GEO. E. IDE, *President.*

[Seal of Corporation.]

Attest: E. W. GLADWIN, *Secretary.*

THOS. C. WATSON. [SEAL.]
J. J. HOOTON. [SEAL.]

Approved.
CHAS. SWAYNE, *Judge.*

6, 1, '01.

Endorsed: Filed June 1st, 1901. F. W. Marsh, clerk.

93 And thereupon, and on the same day, to wit, on the first day of June, A. D. 1901, there issued out of said court, under the hand of the judge thereof, a citation in due form, directed to the

defendant in error, which, together with the return thereof, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

To A. A. Fisher, as executor of the estate of Alexander Suter Maclean, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the 29th day of June, nineteen hundred and one, pursuant to a writ of error, filed in the clerk's office of the United States, for the northern district of Florida, at Pensacola, wherein The Home Life Insurance Company of New York is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Done this first day of June, A. D. nineteen hundred and one.

CHAS. SWAYNE,
Judge of the Circuit Court of the United States in and for the Northern District of Florida, at Pensacola.

UNITED STATES OF AMERICA, }
Northern District of Florida. }

I hereby certify and return that I served the annexed citation on the therein-named A. A. Fisher, executor of the estate of Alexander Suter Maclean, deceased by handing to and leaving a true and correct copy thereof with him personally at Pensacola Fla. in said district on the first day of June, A. D. 1901.

T. F. McGOURIN,
U. S. Marshal,
By H. WOLF,
Ch. O. Deputy.

Endorsed: Filed June 3rd, 1901. F. W. Marsh, clerk.

94 The respective parties to this cause, by agreement filed with the said clerk, stipulated that the foregoing, papers and proceedings copied as aforesaid, and no other, shall be included in the transcript upon the attached writ of error to the Supreme Court of the United States.

UNITED STATES OF AMERICA, }
Northern District of Florida. }

I, F. W. Marsh, clerk of the circuit court of the United States in and for the northern district of Florida in the fifth judicial circuit, by virtue of the attached writ of error, and in obedience thereto, and as a return thereof, do hereby certify that the foregoing pages numbered from one to ninety-four inclusive, contains a true and

complete transcript of the record and proceedings had in the circuit court of the United States aforesaid, in the cause of A. A. Fisher, as executor of the estate of Alexander Suter Maclean, deceased, *vs.* The Home Life Insurance Company, of New York, a corporation, and wherein the said Home Life Insurance Company is plaintiff in error, and the said A. A. Fisher executor as aforesaid, is defendant in error, as the same remains of record and on file in said court, and as stipulated by the respective parties thereto.

In testimony whereof, I have cause- the seal of said court to be hereunto affixed, at the city of Pensacola, in the district aforesaid, this twelfth day of June, in the year of our Lord one thousand, nine hundred and one.

Seal U. S. Circuit Court, Northern Dist. of Florida, Fifth Circuit.

F. W. MARSH, *Clerk.*

95 UNITED STATES OF AMERICA, *ss:*

To the President of the United States, the honorable the judges of the circuit court of the United States for the northern district of Florida, Greeting:

Because of the records and proceedings, as also in the rendition of the judgment of the plea which is in the said circuit court before you, or some of you, between A. A. Fisher, as executor of Alexander Suter Maclean, deceased, plaintiff, and The Home Life Insurance Company of New York, defendant, a manifest error hath happened, to the great damage of the said defendant, The Home Life Insurance Company of New York, as in its complaint appears, we being willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf do command you if judgment be therein given, that, then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 29 day of June, A. D. nineteen hundred and one, in the said Supreme Court, to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein of correcting that error what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
96 of the said Supreme Court, the fir-t day of June, A. D. nineteen hundred and one.

Seal U. S. Circuit Court, Northern Dist. of Florida, Fifth Circuit.

F. W. MARSH,
Clerk of the Circuit Court of the United States in and for the Northern District of Florida.

Allowed by—
CHAS. SWAYNE, *Judge.*

97 [Endorsed:] A. A. Fisher as ex't'r *vs.* Home Life Ins. Co. of N. Y. Writ of error. The within writ of error served this June 1st 1901 by lodging and filing a copy for the defendant in error in the clerk's office of the United States circuit court for the northern district of Florida at Pensacola, Florida. Witness my hand & official seal this June 1 1901. F. W. Marsh, clerk. (Seal U. S. circuit court, northern dist. of Florida, fifth circuit.) Blount & Blount, Pensacola, Fla.

Endorsed on cover: File No. 18,208. N. Florida C. C. U. S. Term No. 355. The Home Life Insurance Company of New York, plaintiff in error, *vs.* A. A. Fisher as executor of the estate of Alexander Suter Maclean. Filed June 26, 1901.